

No. 12590

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United States  
Court of Appeals  
for the Ninth Circuit.

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EDWIN L. CARTY, H. McCORMICK, EUGENE  
DOUD, JAMES R. DOUD, VINCENT  
DOUD, RAYMOND E. FARRELL, JAMES  
D. McCORMICK, ROBERT MAULHARDT  
and EDWARD C. MAXWELL,

Appellants.

VS.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeals from the United States District Court  
Southern District of California,  
Central Division.

OCT - 4 1950









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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellee:

ERNEST A. TOLIN,

United States Attorney,

NORMAN W. NEUKOM,

SANDER L. JOHNSON,

Assistants U. S. Attorney,

600 U. S. Post Office and  
Court House Bldg.,  
Los Angeles 12, Calif.

In the United States District Court in and for the  
Southern District of California, Central Division

No. 21165 CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN L. CARTY, H. M. CORMACK, EU-  
GENE DOUD, JAMES R. DOUD, VINCENT  
DOUD, RAYMOND E. FARRELL, JAMES  
D. McCORMICK, ROBERT MAULHARDT,  
and EDWARD C. MAXWELL,

Defendants.

### INFORMATION

(U.S.C., Title 16, Sec. 703, et seq., Migratory Bird  
Treaty Act, and Sec. 707, Penalty Provision;  
and the Regulations duly proclaimed there-  
under)

The United States Attorney charges:

That on or about October 22, 1949, in Ventura  
County, California, within the Central Division of  
the Southern District of California, the defendants,  
Edwin L. Carty, H. M. Cormack, Eugene Doud,  
James R. Doud, Vincent Doud, Raymond E. Far-  
rell, James D. McCormick, Robert Maulhardt, and  
Edward C. Maxwell, without being permitted so to  
do by any regulation made, adopted, and approved  
under authority of the Migratory Bird Treaty Act  
of July 3, 1918, as amended, did take, hunt and kill,  
migratory waterfowl and migratory game birds  
over baited ponds and areas, by means, aid and use

of shelled grain, namely, barley and cracked lima beans, which said grain and beans had been deposited, distributed and scattered over said ponds and areas so as to constitute a lure, attraction and enticement to said migratory game birds; contrary to the provisions of the Migratory Bird Treaty Act and the Regulations relating thereto, as duly proclaimed pursuant to law (Regulations relating to migratory birds, approved and proclaimed by the President on July 29, 1948, 13 F. R. 4411, as last amended July 29, 1949, [2] 14 F. R. 4798, Part 1, Chapter 1, Subchapter B, Title 50, Code of Federal Regulations).

ERNEST A. TOLIN,

United States Attorney.

/s/ NORMAN W. NEUKOM,

Assistant United States Attorney, Chief of Criminal Division.

Affidavit of Service by mail attached.

[Endorsed]: Filed February 25, 1950.

---

At a stated term, to wit: The February Term, A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the 28th day of February, in the year of our Lord one thousand nine hundred and fifty.



Present: The Honorable Harry C. Westover,  
District Judge.

[Title of Cause.]

For arraignment and plea; S. L. Johnson, Assistant U. S. Attorney, appearing as counsel for Government; John J. Irwin, Esq., appearing as counsel for all the defendants, who are present on O/R, viz.: Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward G. Maxwell;

Defendants state their true names are as set forth in Indictment, are informed they are entitled to jury trial and counsel, waive reading of Indictment and enter separate pleas of not guilty as charged.

Court orders that a jury be impaneled and clerk draws names of twelve jurors who take places in the jury box and are examined for cause.

Floyd H. Gelvin is excused for cause by the Court and clerk draws name of Ruth A. Yancey, who is examined and passed for cause.

Victoria M. Kevatiske is excused for cause by the Court and clerk draws name of Clarissa J. Wright, who is examined and excused for cause by the Court. Clerk draws name of Helen E. Magnuson, who is examined and passed for cause.

There being no further peremptory challenges by either side, the jurors now in the box are accepted by both sides and sworn as the jury for this trial, viz.: [5]

### The Jury

- |                    |                       |
|--------------------|-----------------------|
| 1. Faith C. Moody  | 7. Harry Eisenman     |
| 2. Ruth A. Yancy   | 8. Jos. R. Blackstock |
| 3. Irving Perper   | 9. Cassie Wilson      |
| 4. June R. Warton  | 10. Ruth Meugle       |
| 5. Max Lewin       | 11. Helen Magnuson    |
| 6. Kenneth T. Vann | 12. Harriet Matlock   |

Court orders that the prospective petit jurors present who were not impaneled for this trial are excused until notified.

Attorney Johnson makes opening statement to the jury for Government.

Attorney Irwin declines opening statement at this time and defers it until the close of the Government's case.

Jack E. Bedwell is called, sworn, and testifies for Government. Government Ex. 1 to 9, incl., are admitted in evidence.

At 11:25 a.m. Court admonishes the jury not to discuss this cause and declares a recess to 2 p.m. At 2:25 p.m. court reconvenes herein and all being present as before, including all nine defendants, counsel for both sides, and the jury, Court orders trial proceed.

Witness Bedwell resumes the stand and testifies further for Government. Defendants' Ex. A is admitted in evidence.

At 3:50 p.m. Court reminds the jury of the admonition heretofore given, not to discuss this cause, and declares a recess in this trial to 10 a.m., March 1, 1950. [6]

At a stated term, to wit: The February Term, A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 2nd day of March, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Harry C. Westover,  
District Judge.

[Title of Cause.]

For further jury trial; S. L. Johnson, Assistant U. S. Attorney, appearing as counsel for Government; John J. Irwin, Esq., appearing as counsel for all nine defendants, who are present on O/R, viz.: Edwin L. Carty, H. McCormack, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward C. Maxwell; and the jury being present, Court orders trial proceed.

Witness Edgerton resumes the stand and testifies on cross-examination.

R. E. Bedwell is called, sworn, and testifies for Government. Defendants' Ex. C is offered and admitted in evidence.

Edmund White, Dell A. Reeder, and Jesse F. Thompson, respectively, are called, sworn, and testify for Government.

At 11 a.m. Court admonishes the jury not to discuss this cause and declares a recess. Court reconvenes herein and all being present as before, including counsel for both sides, and the jury; Government rests.



Attorney Irwin moves the Court for an instructed verdict of not guilty and the Court denies the said motion.

Chas. F. Blackstock, Wm. P. Clark, and Edward C. Maxwell, respectively, are called, sworn, and testify for defendants.

At noon Court admonishes the jury not to discuss this cause and declares a recess in this trial to 2 p.m. today.

At 2 p.m. court reconvenes herein and all being present as before, including counsel for both sides, all nine defendants, and the jury; Court orders trial proceed. [7]

Ed. W. Henke and George E. Gruell, respectively, are called, sworn, and testify for Government out of order, counsel for defense consenting thereto.

Virgil Nover is called, sworn, and testifies for defendants.

Defendant Maxwell resumes the stand and testifies further for defendants. Defendants' Ex. D, E, F, and G are admitted in evidence.

At 2:55 p.m. Court admonishes the jury and declares a recess.

At 3:12 p.m. Court reconvenes herein and all being present as before, including all nine defendants, counsel for both sides, and the jury, Court orders trial proceed.

Lewis Drepeau, Justice of the District Court of Appeals, State of California, and Eugene W. Biscailuz, Sheriff of Los Angeles County, respectively, are called, sworn, and testify for defendants.

Defendant Maxwell resumes the stand and testifies further on cross-examination.

Roswell C. Welch and Carlos Gitman, respectively, are called, sworn, and testify for defendants.

At 3:55 p.m. Court admonishes the jury not to discuss this cause and declares a recess in this trial to 10 a.m., March 3, 1950. [8]

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At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 9th day of March, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Harry C. Westover,  
District Judge.

[Title of Cause.]

For further jury trial; S. L. Johnson, Assistant U. S. Attorney, appearing as counsel for Government; John J. Irwin, Esq., appearing as counsel for all nine defendants, who are present on bond, viz.: Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward G. Maxwell; and the jury being present;

The Court inquires of the jury if it has reached a verdict, to which the Foreman of the jury replies in the negative, and requests another hour for further deliberation; whereupon,



The Court orders that the jury return to the jury room for further deliberation. At 3:43 p.m. court reconvenes herein, and all being present as before, including all nine defendants, counsel for both sides, and the jury;

The Court inquires if the jury has reached a verdict, to which the Foreman of the jury replies in the affirmative and presents a verdict as to each of the nine defendants. The said verdicts are read in open court by the clerk of the Court, and each juror being thereupon polled, replies in the affirmative.

Said verdicts are read in open court and ordered filed and entered in minutes, to wit:

\* \* \*

The Court orders cause continued to March 20, 1950, 2 p.m., for sentence of each defendant.

On stipulation of counsel it is ordered that proceedings showing name of defendant H. W. McCormack be changed to read H. McCormick. [9]

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[Title of District Court and Cause.]

### VERDICT

We, the Jury in the above-entitled cause, find the defendant, Edwin L. Carty, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,

Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [10]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Eugene Doud, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [11]

---

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Edward C. Maxwell, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [12]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, James R. Doud, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [13]

---

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, James D. McCormick, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [14]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Vincent Doud, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [15]

---

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, H. M. Cormack, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,  
Foreman of the Jury.

[Endorsed]: Filed March 9, 1950.



[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Raymond E. Farrell, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,

Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [17]

---

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Robert Maulhardt, guilty as charged in the Indictment.

Dated: Los Angeles, California, March 9, 1950.

/s/ IRVING PERPER,

Foreman of the Jury.

[Endorsed]: Filed March 9, 1950. [18]

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INSTRUCTIONS GIVEN

Government's Instruction No. 1

(Province of the Court)

Members of the Jury:

You have heard the evidence and the argument.

Now it is the duty of the Court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

Given.

/s/ H. C. W. [20]

Government's Instruction No. 2

(Province of the Jury)

(Information on Accusation)

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the information and the denial made by the plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

An information is but a formal method of accus-

ing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt.

Given.

/s/ H. C. W. [21]

Government's Instruction No. 3

(Direct Evidence)

(Circumstantial Evidence)

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused, and inconsistent with every reasonable supposition of innocence.

If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury should acquit the accused.

Given.

/s/ H. C. W. [22]



## Government's Instruction No. 4

(Evidence, Stipulations, Inferences, Presumptions)

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated, and all applicable presumptions stated in these instructions. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such inferences as seem justified in the light of your experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption is an inference which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but un-



less so outweighed the jury are bound to find in accordance with the presumption.

Given.

/s/ H. C. W. [23]

Government's Instruction No. 5-A

Relative to the testimony pertaining to the character of the defendants in respect to those traits of character which ordinarily would be involved in the commission of a crime like that charged in this case, I instruct you as follows:

Such evidence is regarded by the law as relevant to the question whether defendant is innocent or guilty of the crime charged, because the jury may, if its judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged. Character evidence of itself may be sufficient to raise a reasonable doubt whether or not defendant is guilty, which doubt otherwise would not exist. Hence you must consider such evidence in connection with all other evidence in the case.

But if, after weighing all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged against him in the information, your duty will be to find him guilty of that offense, notwithstanding the testimony that he was or is a person of good character.

Caljic, No. 32.

Given.

/s/ H. C. W. [24]

## Defendant's Instruction No. . . .

The defendants, and each of them, have introduced evidence of their good character. This evidence stands uncontradicted. ~~It is incumbent upon me, therefore, to instruct you as to the rules to be followed in weighing and applying character evidence in reaching a verdict in this case.~~

The purpose and function of character evidence is to generate in your minds a reasonable doubt, and it is to be considered by you regardless of whether the other evidence in the case is clear or doubtful. Therefore, when you consider, as you must, the character evidence introduced along with all the other evidence in the case, if a reasonable doubt exists as to a defendant's guilt, then, as to such defendant, he, and each of them, is entitled to an acquittal.

Of course, mere proof of good character does not entitle a defendant to an acquittal, but it is equally true that evidence of good character, when considered along with all the other evidence in the case, may be the factor which creates the reasonable doubt which entitles the defendant to an acquittal.

Quick v. U. S.

128 Fed. 2d 832.

Point 7 at 835-836.

Points 8 and 9 at 836.

Given as modified.

/s/ H. C. W. [25]

## Government's Instruction No. 7

## (Credibility of Accused)

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

Given.

/s/ H. C. W. [26]

## Government's Instruction No. 9

## (Opinion Evidence)

The rules of evidence ordinarily do not permit a witness to testify as to his opinions or conclusions. An exception to this rule exists in the case of an expert witness. A witness who by education and experience has become expert in any art, science or profession, may state his opinion as to a matter in which he is versed and which is material to the case, and may also state the reasons for such opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves; and you may reject it entirely if you conclude the reasons given in support of the opinion are unsound.

Given.

/s/ H. C. W. [27]

## Government's Instruction No. 11

## (Court's Questions to Witnesses)

During the course of a trial, I occasionally ask questions of a witness, in order to bring out facts



not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

Given.

/s/ H. C. W. [28]

Government's Instruction No. 12

(Court's Comments to Counsel)

It is the duty of the Court to admonish an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure.

You are to draw no inference against the side to whom an admonition of the Court may have been addressed during the trial of this case.

Given.

/s/ H. C. W. [29]

Government's Instruction No. 13

It is charged in the information that on or about October 22, 1949, in Ventura County, California, within the jurisdiction of this Court, the defendants Edwin L. Carty, H. M. Cormack, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward C. Maxwell, without being permitted so to do by any regulation made, adopted, and approved under authority of the Migratory Bird Treaty Act

of July 3, 1918, as amended, ~~July 29, 1949~~, did take, hunt, and kill migratory waterfowl and migratory game birds over ponds and areas which had been baited by means, aid, and use of shelled grain, namely, barley and cracked lima beans which had been deposited, distributed, and scattered over the ponds and areas so as to constitute a lure, attraction and enticement to said migratory game birds; contrary to the provisions of the Migratory Bird Treaty Act and the Regulations relating thereto as duly proclaimed pursuant to law.

Given.

/s/ H. C. W. [30]

Defendants' Instruction No. . . .

You are instructed that the Rules of Criminal Procedure permit the trial of several defendants under one Information as in the instant case. However, each defendant is entitled to your separate and considered verdict, with the law as I have given it to you to be applied to each separate defendant in your deliberations concerning him. It is, therefore, possible that you may agree as to your separate verdicts on each and every defendant. It is also possible that you may agree as to a defendant, or defendants, and disagree as to other defendants in this case.

Given.

/s/ H. C. W. [31]

## Government's Instruction No. 14

Section 703 of Title 16, United States Code, provides in part that:

“Unless and except as permitted by regulations made as hereinafter provided in sections 703-710 of this title, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess,” \* \* \* (or) \* \* \* “any migratory bird, \* \* \* included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), and the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936. \* \* \*”

On July 29, 1948, the President of the United States approved and proclaimed a regulation propounded by the Fish and Wildlife Service of the United States, Department of the Interior, under the authority of the Migratory Bird Treaty Act which I have just read to you. That regulation provides in §6.3, in part, as follows:

“Waterfowl (except for propagating, scientific, or other purposes under permit issued pursuant to §6.8) and mourning doves and white-winged doves are not permitted to be taken, directly or indirectly, by means, aid, or use of shelled, shucked, or unshucked corn, or of wheat or other grain, salt, or other feed that has been so deposited, distributed, or scattered as to constitute for such birds a lure, attraction, or enticement to, on, or over the area where hunters are attempting to take them: Pro-



vided, however, such birds may be taken over properly shocked corn and standing crops of corn, wheat, or other grain or feed, and grains found scattered solely as a result of agricultural harvesting.” [32]

Thus, this regulation which I have just read to you has the effect of law, since it was propounded under the authority of the Migratory Bird Act of 1918 as amended.

Section 707 of Title 16, United States Code, provides in part that:

“Any person, association, partnership, or corporation who shall violate any of the provisions of said conventions or sections 703-711 of this title, or who shall violate or fail to comply with any regulation made pursuant to said sections, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be \* \* \*” (punished as the law provides).

Given.

/s/ H. C. W.

### Government's Instruction No. 15

Thus, there are two essential elements of the offense charged in the information:

First: The taking, hunting, or killing of migratory game birds;

Second: Over ponds or other hunting areas by means, aid, and use of shelled grain or other feed distributed thereover so as to constitute a lure, attraction and enticement to such birds.

Given.

/s/ H. C. W. [34]

## Instruction No. ....

There has been testimony that barley and lima beans were found on the premises. It is admitted that barley is grain. The testimony is conflicting as to the amount of barley found on the Santa Clara Game Preserve. It is for your determination, as to whether it was present in such quantities as to constitute a lure or enticement for the ducks present, which have been estimated variously between 4,000 and 12,000 in number.

As to the lima beans, you must first determine whether, under the terms of the regulations, lima beans are in the category of "other feed" which will lure, entice or attract migratory birds. [35]

## Government's Instruction No. 18

You are further instructed that in a case of this sort, it is not necessary for the Government to allege or to prove at trial that a defendant or defendants had knowledge of unlawful baiting over hunting grounds to find him guilty of the offense charged. In such case, guilty knowledge or intent is no part of the issue of the case. In this regard it is required that hunters shall investigate at their peril the conditions surrounding the fields and areas in which they are doing their hunting. Thus, the fact that a particular defendant may claim he did not know the area in which he was hunting was baited as charged in the information may not be considered by you in determining his guilt or innocence of the guilt charged. He was under a positive duty



to investigate for such conditions before hunting in the area.

United States vs. Schulze, 28 Fed. Supp. 234 (1939).

United States vs. Reese, 27 Fed. Supp. 833 (1939).

Given.

/s/ H. C. W. [36]

Government's Instruction No. 20

You are instructed that hunters have no property right in migratory birds, but only such permissive privileges as governmental authorities decree.

Missouri vs. Holland, 252 U. S. 416, 434.

Brandenburg vs. Doyle, 12 Fed. Supp. 343, 344.

Shouse vs. Moore, 11 Fed. Supp. 784, 787.

Nor is the government's power to protect or regulate the hunting of migratory waterfowl confined to those lands to which it has title.

Bailey vs. Holland, 126 F. (2d) 316, 317.

Given.

/s/ H. C. W. [37]

Government's Instruction No. 21

You are instructed that you need not be concerned whether the particular birds in this case are in fact migratory, that is, whether they have actually ever been anywhere other than California in their native haunts; for once the evidence establishes that the particular birds taken are of the species or type included in the Migratory Bird Treaty and the Con-

gression Act and Regulations in connection therewith, the question of whether those particular birds actually went out of this state or were raised in this state, or whether they came from Canada, or elsewhere, is not in issue. The only issue, then, is whether the defendants hunted or killed the migratory birds as charged in the Information.

United States vs. Lumpkin, 276 Fed. 580.

In this connection testimony has been produced to the effect that the birds taken from defendants by the Enforcement Officers, involved in this case, were of the following types: Sprigs, also known as Pintails, Spoonbill, Greenneck Teals, Redheads, Widgeons, and Cackling Goose.

You are therefore further instructed that as a matter of law all birds of these types are migratory birds within the meaning of the Treaty and the statute and Regulations concerned in this case.

Given.

/s/ H. C. W. [38]

#### Government's Instruction No. 19a

You are instructed that the regulations concerning the baiting of migratory birds is violated whether the hunters had pursued the indirect method of baiting before the season opened so as to keep the birds in the hunting area to be shot after the season opens, whereupon the hunters may flush them as they walk or punt over the preserves, or by directly

placing the grain or other feeds in front of the blinds or stands during the season.

Cerritos Gun Club vs. Hall, 96 F. (2d) 620, 624 (C.A. 9th 1938).

Furthermore, concerning the provision in the regulation that migratory birds are not permitted to be taken “directly or indirectly” by means of bait, you are instructed that the word “indirectly” equally applies to any luring of the birds by grain or other feed to the hunting area, regardless of whether the grain or other feeds is spread before the bird blinds themselves or is more widely scattered.

Cerritos Gun Club vs. Hall, *ibid*, 629.

Given.

/s/ H. C. W. [39]

#### Government's Instruction No. 4a

(Presumption of Innocence, Burden of Proof,  
Reasonable Doubt)

The law presumes a defendant to be innocent of any crime. This presumption of innocence continues throughout the trial, and has the weight and effect of evidence in favor of the accused. You must consider the evidence in the light of this presumption. The presumption of innocence is sufficient to acquit a defendant, unless the presumption is outweighed by evidence satisfying the jury beyond a reasonable doubt of the defendant's guilt.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove any-



thing to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel satisfied to a moral certainty that a defendant is guilty of the charge.

Given.

/s/ H. C. W. [40]

Defendants' Instruction No. . . . .

You are instructed that the presumption of innocence with which the defendants are at all times clothed is not a mere form to be disregarded by you at pleasure, but that it is an essential substantial part of the law of the land, and binding on you in this case, and it is your duty in this case to give the defendants the full benefit of this presumption



and to acquit the defendants unless the evidence in this case convinces you of their guilt as charged beyond ~~all~~ reasonable doubt.

Given.

/s/ H. C. W. [41]

Instruction No. ....

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experi-

ence. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves. And if you find that a witness has testified falsely in regard to any part of his testimony, you can, if you choose, disregard the whole of such witness's testimony.

Government's Instruction No. 23

(Verdict as to Accused Only)

You are here to determine the guilt or innocence of the accused from the evidence before you. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So if the evidence convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are also guilty.

On the other hand, if any reasonable doubt remains in your minds after impartial consideration of all the evidence, you should acquit the accused.

Given.

/s/ H. C. W. [44]

Government's Instruction No. 24  
(Verdict—Jury's Responsibility)

It is proper to add the caution that nothing said in these instructions—nothing in any form of verdict prepared for your convenience—is to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

Given.

/s/ H. C. W. [45]

Government's Instruction No. 22  
(Punishment)

The punishment provided by law for the offense charged in the information is a matter exclusively within the province of the Court, and is not to be considered by the jury in arriving at an impartial verdict as to the guilt or innocence of the accused.

Given.

[Endorsed]: Filed March 10, 1950. [46]

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INSTRUCTIONS REFUSED

Defendants' Instruction No. A

The defendants in this case have raised the defense of entrapment. You are instructed that the first duties of the officers of the law are to prevent, not



to punish, crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it. When the criminal design originates, not with the accused, but is conceived in the minds of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.

Sorrells vs. United States,  
287 U. S. 434, 444, 445

Entrapment is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer.

Sorrells v. United States 287,  
U. S. 434, at 454

There is common agreement that where a law officer envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration, for the sole purpose of obtaining a victim through indictment, conviction and sentence, the consummation of so revolting a plan ought not to be permitted by any self-respecting tribunal.

Sorrells v. United States,  
287 U. S. 434, at 454

You are, therefore, instructed that if you have first concluded beyond a reasonable doubt that the defendants have committed the acts alleged in the information, that having so concluded, you are further satisfied that prior to their commission the de-



fendants never conceived any intention of [48] committing these offenses, or any similar offense, but that the officers of the government incited and by suasion and representations lured them to commit the offenses alleged in order to entrap, arrest, and prosecute the defendants therefor, then these facts are fatal to the prosecution of these offenses, and the defendants, and each of them, are entitled to a verdict of not guilty.

Refused.

/s/ H. C. W. [49]

Defendants' Instruction No. ....

The filing of an information by the United States Attorney is no evidence of guilt. Such filing is the mechanics provided by law for beginning a line of action culminated by a trial before a jury such as we are now having. The burden of proving the allegations set out in the information is not placed by law upon the defendants, the burden of proof is upon the prosecution. Every element of the crime must be established by proof which convinces you to a moral certainty and beyond a reasonable doubt, as I have given it to you.

Out by Consent. [50]

Defendants' Instruction No. ....

You are instructed that each and every fact and circumstance relied upon by the prosecution to establish the guilt of the defendants must be proved

by the evidence beyond all reasonable doubt, and if the jury are not satisfied beyond all reasonable doubts that each such fact and circumstance has been proven, it is your duty to find a verdict of not guilty.

People v. James, 5 Cal. App. 427 at 431.

Refused—Covered. [51]

Defendants' Instruction No. ....

Reasonable doubt is not mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all evidence leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is upon the prosecutor. All presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent until he is proven guilty. If, upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satis-

fies the reason and judgment of those who are bound to act conscientiously upon it.

Commonwealth v. Webster, 5 Cashing 320.

Refused. [52]

Defendants' Instruction No.....

The federal jurisdiction over wild life is predicated upon treaties entered into by and between the United States and Great Britain, and by and between the United States and United Mexican States. These treaties were entered into in 1916 and 1936. Thereafter, Congress empowered the Secretary of the Interior to make proclamations and issue regulations to carry out the intent and purpose of these treaties.

The proclamations and regulations issued by the Secretary pursuant to such authority cover open and closed seasons, bag limit of birds, and circumstances and conditions under which migratory birds may be taken. You are instructed that there is no issue here involved of hunting out of season, or possession over the bag limits established by the Secretary. A portion of the regulations involved are as follows:

“Waterfowl . . . are not permitted to be taken, directly or indirectly, by means, aid, or use of shelled, shucked, or unshucked corn, or of wheat or other grain, salt, or other feed that has been so deposited, distributed, or scattered as to constitute for such birds a lure, attraction, or enticement to, on or



over the area where hunters are attempting to take them . . . ”

(Proclamation No. 2616, Regulation 3. Cited in 16 U.S.C.A., 1949 Cumulative Annual Pocket Part, Section 704)

Now, in determining whether or not there was grain present on the property of the Santa Clara Club on which these defendants were hunting on the morning of October 22, 1949, in violation of this regulation, there are certain rules of [53] construction, the propounding of which I feel necessary for your intelligent deliberations. All laws (and regulations (supplied) ) should receive sensible construction. General terms should be so limited in their application so as not to lead injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

*Sorrells v. United States,*

287 U. S. 434, 447, 77 Law Ed. 413, 419

(Taken from the majority opinion of Chief Justice Hughes wherein he quoted verbatim, and with approval, *United States v. Kirby*, 7 Wall. 483, 19 L. ed. 278)

Covered. [54]



## Defendants' Instruction No. . . . .

The defendants have raised the defense of entrapment. The natural and logical approach to this subject of entrapment must be through the application of the doctrine of estoppel. Individuals, in dealing with each other, are not permitted to assert rights or enforce remedies when their own acts induced another to commit the wrong out of which arose the right sought to be enforced. Estoppel is founded on morality and justice, and especially concerns conscience and equity. Although the government is a sovereign, it is not permitted to adopt means which are condemned by the courts when practiced by its citizens. If the conduct of government agents be unconscionable, if it be intentionally deceptive and designed to induce, and does induce another to do something which he would not have otherwise done, the wrongdoer is not, and should not be, permitted to profit thereby. Sound public policy estops the government from asserting that an act which involves no criminal intent was voluntarily done when it originated in and was caused by the government agents' deception.

O'Brien v. United States,  
51 Fed. 2d 674, at 677, 678, 679

If you find, therefore, that the government agents, by their conduct, as appears from the evidence in this case, caused the defendants to do the acts complained of and which from the evidence it appears they would not have otherwise done except for such

conduct, then you are instructed that defendants are entitled to a verdict of not guilty.

O'Brien v. United States, 51 Fed. 2d 674 [55]

[Title of District Court and Cause.]

[U.S.C., Title 16, Sec. 703, et seq., Migratory Bird Treaty Act, and Sec. 707, Penalty Provision; and the Regulations duly proclaimed thereunder.]

ERNEST A. TOLIN,  
United States Attorney.

NORMAN W. NEUKOM,  
Assistant U. S. Attorney,  
Chief of Criminal Division.

SANDER L. JOHNSON,  
Assistant U. S. Attorney,

/s/ SANDER L. JOHNSON. [56]

Government's Instruction No. 6

("Accomplice" Witness)

All evidence of a witness who is connected with the commission of the offense charged should likewise be considered with caution and weighed with great care.

Refused. [57]

Government's Instruction No. 8

(Failure of Accused to Deny)

Thus a defendant who elects to go upon the witness stand and testify subjects himself to the same

rules as apply to any other witness; and if he fails to deny or explain acts of an incriminating nature which the evidence of the prosecution tends to establish against him, such failure may be considered by the jury along with all other circumstances in evidence; since the jury may or may not draw the inference that if the defendant could have truthfully denied or explained the incriminating evidence against him, he would have done so.

Refused. [58]

Government's Instruction No. 10

(Court's Comments on Evidence )

The law of the United States permits the judge to comment to the jury on the evidence in the case. Such comments are only expressions of the judge's opinion as to the facts; and the jury may disregard them entirely, since the jurors are the sole judges of the facts.

Refused.

/s/ H. C. W. [59]

Government's Instruction No. 16

In this connection, you are instructed that the word "take" has been defined in section 6.2 of regulations relating to migratory birds propounded by the Fish and Wildlife Service of the United States Department of Interior and proclaimed by the President on July 29, 1948, to mean to hunt, kill, or capture or attempt to hunt, kill, or capture.



Thus, it is not necessary for the Government to have proved the successful killing or capturing of migratory birds by the means alleged in the information. It is sufficient if it has been proved to your satisfaction that the defendants attempted to take such birds by the means alleged in the information, that is, by the use of bait over the hunting area.

See also:

Cochrane v. United States,  
92 F. (2d) 623, 627, (C.A. 9th 1938).

Refused.

/s/ H. C. W. [60]

Government's Instruction No. 17

I think it well at this time that, although you are probably already aware of them, the aims and purposes of the Migratory Bird Treaty and the acts and regulations which have followed it be explained to you.

It would seem clear that the fundamental purpose is the protection of migratory birds from destruction in an unequal contest between hunter and bird.

United States v. Olson,  
41 Fed. Supp. 433 (1941).

In the Congressional Act itself, it is stated that it is aimed at carrying out the purposes of the convention which adopted the treaty, which are as follows: "saving from indiscriminate slaughter"



and “of insuring the preservation of such migratory birds as are either useful to man or harmless.”

Furthermore, as was stated by another Federal Court in a case dealing with the same subject as this:

“Concern for the welfare and protection of our migratory birds is not by any means limited to those whose chief interest in them rests in the sport of hunting and killing them. The object of providing for their protection and preservation reaches far beyond the motive of the huntsmen and the sport of hunting.” *Gaunt v. Lloyds America of San Antonio*, 11 F. Supp. 787.

Refused.

/s/ H. C. W. [61]

Government's Instruction No. 15a

You are instructed that the only issues of this case are as I have just read them to you. If you find that the facts were as charged in the information, then the two issues, or requirements for conviction, have been found and met. You must then assume that the enforcement officers concerned were only doing their duty in every respect and you must not be concerned with any personalities that may have been involved between them and the defendants. We are not concerned here with purely local controversies arising from collateral matters.

Refused. [62]

## Government's Instruction No. 21a

## (Entrapment)

(Note: In a case of this character, alleging violation of the Migratory Bird Treaty Act, where intent and wilfulness are not elements of the charge, it is respectfully submitted that an instruction pertaining to the law of entrapment is not in point. A review of the cases discussing the subject of entrapment reveals that the defense arises when Government agents induce and originate the criminal intent, design or purpose of a defendant and discussions of the doctrine in all cases have been within the framework of and with respect to the formation of such criminal intent or design. It would seem then, that such cases have no bearing upon the case at hand. However, if the Court feels to the contrary, the following is submitted as a fair and proper instruction.)

You are instructed that where the officers of the law have enticed a person to commit the crime charged and lured him on to its consummation with the purpose of arresting him, the law will not authorize a verdict of guilt.

But if a disposition to violate the law is present, the mere fact that public officers furnished the opportunity to commit the crime is no defense. The Government is not engaged in the business of manufacturing criminals; it has enough to do to prevent the commission of crime. But it often becomes necessary for Government officers and agents to match

their wits against the wits of the man who is deliberately violating the law, or who has violated the law and continues to do so; and in such a case the officers or agents may afford him an opportunity to commit a crime.

Thus, decoys may be used to apprehend and present opportunity to one willing to commit offenses and the officers and agents of the Government as a part of their duty have a perfect right to test persons who they have reasonable ground to believe are engaged in violation of the laws. If a man is engaged and prepared to break the law, the mere fact that employees of the Government put it in his power to break it, or do not at once prevent him from breaking it, and thereby capture him in the very act of breaking the law, does not constitute entrapment and is no defense.

If, however, a man has no disposition to break the law and would not break it except he was induced and persuaded therein by the Government, then that does constitute an entrapment and would be a defense wararnting an [63] acquittal of the crime charged.

See: *Sorrels v. United States*,  
287 U. S. 434, 66 A.L.R. 249.

See also: *Capuano v. United States*,  
9 F. (2d) 41 (C.A. 1st). (Bribery);

*Jindra v. United States*,  
69 F. (2d) 429 at (C.A. 5th). (Narcotics);



Stein v. United States,

166 F. (2d) 851 (C.A. 9th). (Narcotics).

Crim. Law—Key # 37. United States v. Kaiser, 138 F. (2d) 219, cert. den. 320 U. S. 801. [64]

Government's Instruction No. 5

(Credibility of Witnesses, Discrepancies  
in Testimony)

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witness-



ing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves.

Not given.

/s/ H. C. W. [65]

Defendants' Instruction No. ....

Also if you find that a witness has testified falsely in regard to any part of his testimony, you can, if you choose, disregard the whole of such witness' testimony.

Out—Consent—At end of 5.

[Endorsed]: Filed March 10, 1950. [66]

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[Title of District Court and Cause.]

### NOTICE OF MOTION

To the United States of America, and to Ernest A. Tolin, Esq., United States Attorney, and Sander Johnson, Esq., Assistant United States Attorney:

You and Each of You Will Please Take Notice

that the defendants in the above-entitled action will, on the 20th day of March, 1950, at the hour of 2:00 o'clock p.m., in the Courtroom of the Honorable Harry C. Westover, United States District Judge, in the Federal Building at Los Angeles, California, through their attorney John J. Irwin, Esq., move the Honorable Court for a new trial for each and every one of said defendants.

Said motion will be based upon the written motion filed concurrently herewith, the memorandum of points and authorities, records and files in the action, and the affidavit of John J. Irwin.

Dated: At Los Angeles, California, March 14, 1950.

/s/ JOHN J. IRWIN,  
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 14, 1950. [67]

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

Come now the defendants Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt and Edward C. Maxwell, and through their attorney John J. Irwin, Esq., respectfully move the Honorable Court for an order setting aside the judgment of conviction as to each of them in the above-entitled case, and/or an order

granting each and every defendant a new trial of the offense alleged in the above-entitled action. Said motion is made on the following grounds, to wit:

1. Because the verdict of the jury is contrary to the law and the evidence.

2. That the Honorable Court erred in failing to submit to the jury, as requested by defendants' counsel, the instruction on entrapment, and more particularly, the Honorable Court erred in failing to give defendants' requested instruction "A." [69]

3. That the Honorable Court erred in giving Government's Instruction 19 "a" over defendants' counsel's objection.

4. That under all the circumstances, the Honorable Court erred in refusing to declare a mistrial and discharging the jury when the said jury reported, at approximately 10:30 p.m. on the night of March 8, 1950, that they were unable to agree.

5. That the Honorable Court further erred at the same time and place after the jury had so reported in directing they be locked up for the night and resume deliberations the following day, all over the objection of defendants' counsel.

6. That there is newly discovered evidence which is material to defendants' plea of not guilty, which evidence was not known or available to the defendants or their counsel until after the jury had been instructed and retired.

7. That the United States Attorney, through his Assistant, was guilty of misconduct in that he withheld evidence favorable to the defendants, and



which, if available, was material to the defendants' case.

Wherefore, these defendants pray that the Court set aside the verdict and grant them, and each of them, a new trial on the Information, upon which a verdict of guilty was returned.

Dated: March 14, 1950.

/s/ JOHN J. IRWIN,

Attorney for Defendants. [70]

#### Memorandum of Points and Authorities

A judge may not use undue influence to command or coerce a verdict of guilty.

Wissel v. United States, 22 Fed. 2d 468.

A new trial may be granted on the grounds of newly discovered evidence.

Rule 33, Federal Rules of Criminal Procedure.

Johnson vs. United States,

32 Fed. 2d 128.

Where the criminal design is conceived in the mind of the Government officers and the accused is, by persuasion, deceitful representation, or inducement, lured into the commission of a criminal act, the Government is estopped by sound public policy from prosecution therefor.

Sorrells v. United States, 287 U. S. 434.

Respectfully submitted,

/s/ JOHN J. IRWIN,

Attorney for Defendants.

[Endorsed]: Filed March 14, 1950. [71]



[Title of District Court and Cause.]

STIPULATION IN RE MOTION FOR  
NEW TRIAL

It appearing that defendants heretofore filed a Motion For New Trial, and that grounds 6 and 7 were supported by the affidavit of defendants' attorney based upon information relayed to the said defendants' attorney by Sander Johnson, Esq., Assistant United States Attorney;

It further appearing, after the filing of said Motion for New Trial the Assistant United States Attorney was advised that the information conveyed by him to defendants' counsel was incorrect, and immediately thereafter the Assistant United States Attorney advised defense counsel that there was a possibility of error in the information furnished by him to defendants' counsel, and which was the basis of defendants' counsel's affidavit in support of grounds 6 and 7 of defendants' Motion for New Trial. Thereupon it was mutually agreed by and between the Government's counsel and defendants' counsel that they would personally examine [73] the evidence which was and is the subject matter of grounds 6 and 7 of defendants' Motion for New Trial. Following this examination both Government's counsel and defendants' counsel mutually agreed that the information volunteered to defendants' counsel after the jury had retired in the above-entitled matter was the result of incomplete information, and it appears that grounds 6 and 7 of defendants' Motion for New Trial are not well founded.

Accordingly, It Is Stipulated by and between the plaintiff through its attorneys, and the defendants, through their attorney, that grounds 6 and 7 of defendants' Motion for New Trial may be abandoned and stricken without prejudice to the other and remaining grounds in said Motion.

It Is Further Stipulated that the affidavit of defendants' counsel filed in support of said grounds 6 and 7, for Motion for New Trial, may be withdrawn from the files of the United States District Court.

Dated: At Los Angeles, California, this 20th day of March, 1950.

ERNEST A. TOLIN,  
United States Attorney.

By /s/ SANDER L. JOHNSON,  
Assistant U. S. Attorney.

/s/ JOHN J. IRWIN,  
Attorney for Defendants.

Upon reading the foregoing Stipulation, and good cause appearing therefor, It Is Hereby Ordered that grounds 6 and 7 of defendants' Motion for New Trial may be abandoned without prejudice to the remainder of said Motion, and It Is Further Ordered that the affidavit of John J. Irwin, filed in support of grounds 6 and 7 with the Clerk of the Court may be withdrawn and delivered to John J. Irwin, Esq.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [74]

At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Harry C. Westover,  
District Judge.

[Title of Cause.]

For hearing on motion of defendant for a new trial, pursuant to notice thereof filed March 14, 1950; S. L. Johnson, Assistant U. S. Attorney, appearing as counsel for Government; John J. Irwin, Esq., appearing as counsel for defendants who are all present on O/R, viz.; Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward G. Maxwell;

Attorney Irwin makes a statement. Court orders said motion of defendants for a new trial denied, and pronounces judgment upon each of the said nine defendants as follows:

Each defendant is fined \$500. and allowed to March 27, 1950, at noon, to pay said fine, to wit: [75]



District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

EDWIN L. CARTY.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of



this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [76]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

H. McCORMICK.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [77]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

EUGENE DOUD.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been

convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,

U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [78]



District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

JAMES R. DOUD.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.



It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [79]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

VINCENT DOUD.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [80]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

RAYMOND E. FARRELL.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [81]



District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

JAMES D. McCORMICK.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [82]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

ROBERT MAULHARDT.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant appeared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient

cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [83]

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District Court of the United States for the Southern  
District of California, Central Division

No. 21165-Criminal

UNITED STATES OF AMERICA,

vs.

EDWARD G. MAXWELL.

### JUDGMENT AND COMMITMENT

On this 20th day of March, 1950, came the attorney for the Government and the defendant ap-



peared in person and by counsel, John J. Irwin, Esq.; and,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of unlawfully hunting migratory waterfowl over baited area in violation of Section 703, Title 16, U. S. Code, as charged in the Information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of \$500.00.

It is further adjudged that on motion of the defendant that he be allowed until March 27th, 1950, 12 noon, in which to pay said fine.

It is ordered that the Clerk deliver a copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,  
U. S. District Judge.

[Endorsed]: Filed March 20, 1950. [84]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

The names of the appellants are Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt and Edward C. Maxwell, and their addresses are care of Edward C. Maxwell, Esq., 326 South A Street, Oxnard, California.

The names and addresses of the attorneys for appellants are Otto Christensen, Esq., 1212 Spring Arcade Building, 541 South Spring Street, Los Angeles 13, California, and John J. Irwin, Esq., 5658 Wilshire Boulevard, Los Angeles 36, California.

The offense for which the defendants were convicted was a violation of Section 703, Title 16 of the United States Code, which makes it an offense to hunt and kill migratory waterfowl and migratory game birds over baited ponds and areas by means, aid, and use of shelled grain and other feed distributed and scattered over said ponds and areas so as to constitute a lure, attraction [85] and enticement to said migratory game birds. A one-count Information, including all of the defendants therein, was filed and pursuant to pleas of not guilty a trial was had before a jury resulting in a conviction of said offense.

The jury returned its verdict of guilty on March 9, 1950; within the time provided defendants filed their Motion For New Trial, which Motion was denied on March 20, 1950, by the Honorable Harry C. Westover, Judge Presiding. Said Honorable Judge immediately thereafter, and on the same date, sen-

tenced each of the defendants above named to pay a fine of \$500.00.

The above-named appellants hereby appeal to the United States Circuit Court of Appeals, Ninth Circuit, from the above-stated judgment. Appeal will be based on the grounds set forth in the Motion For New Trial, and particularly on the grounds that:

1. The offense charged in the Information did not constitute a crime;

2. The evidence was insufficient to support the verdict;

3. Errors of law including, (a) The Honorable Trial Court's failure to instruct the jury on entrapment as requested; and (b) The giving of other instructions over defense counsel's objection;

4. That the Court erred in confining the jury over-night after they reported they were unable to agree.

Dated: At Los Angeles, California, this 24th day of March, 1950.

OTTO CHRISTENSEN and  
JOHN J. IRWIN,

By /s/ JOHN J. IRWIN,  
Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1950. [86]

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[Title of District Court and Cause.]

### STAY OF EXECUTION

It appearing to the Court that the defendants Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell,



James D. McCormick, Robert Maulhardt and Edward C. Maxwell have appealed from the verdict of guilty and judgment thereafter pronounced, on March 20, 1950, against each of them that they pay a fine of \$500.00, the fines totalling in the aggregate the sum of \$4500.00;

Now, Therefore, the judgment of the Court entered on March 20, 1950, in the above-entitled matter as against each of the above-named defendants may be and is hereby stayed pending the final determination of the cause on appeal on condition that each defendant deposit in the registry of the District Court the sum of \$500.00. Said \$500.00 so deposited shall be retained by the Clerk of the Court pending disposition of the appeal. If the judgment of this Court is affirmed, or otherwise becomes final, the said moneys so deposited shall be retained by the Clerk of the Court in full satisfaction of the fines imposed. Should, however, the judgment of this Court be reversed, said moneys so deposited shall be returned to the defendants.

Dated: At Los Angeles, California, this 24th day of March, 1950.

/s/ HUGH HUNTER,

United States District Judge.

Pursuant to Rule 38(a) (3).

Approved as to form.

/s/ SANDER L. JOHNSON,

Assistant U. S. Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1950. [89]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME  
AND ORDER THEREON

It appearing that Otto Christensen, Esq., one of the attorneys for the Appellants, has been absent from the District for an approximate period of three weeks, and

It further appearing that on the 20th day of March, 1950, all of the defendants in the above-entitled matter filed their Notice of Appeal from the judgment of conviction and sentence thereon in the above-entitled cause, and

It further appearing that the time within which to designate the record on appeal and to file the record and docket the appeal will expire on April 30, 1950;

It Is Hereby Stipulated by and between the plaintiff and appellee, through its attorneys Ernest A. Tolin, Esq., United States Attorney, and Sander L. Johnson, Esq., Assistant United States Attorney, and the defendants and appellants, through their attorneys Otto Christensen, Esq., and John J. Irwin, Esq., that all of the defendants and appellants may have thirty (30) days from April 30, 1950, within which to serve and file their designation of record on appeal, and sixty (60) days from April 30, 1950,

within which to file the record and docket the appeal.

Dated: At Los Angeles, California, this ..... day of April, 1950.

ERNEST A. TOLIN,  
Assistant United States  
Attorney,

By /s/ SANDER L. JOHNSON,  
Attorneys for Plaintiff and  
and Appellee.

OTTO CHRISTENSEN and  
JOHN J. IRWIN,

By /s/ JOHN J. IRWIN,  
Attorneys for Defendants  
and Appellants.

Order

The Court having read the foregoing stipulation of the attorneys in the above matter, and good cause appearing therefor,

It Is Hereby Ordered that all of the defendants in the above-entitled matter may have thirty (30) days from April 30, 1950, within which to serve and file the designation of record on appeal, and sixty (60) days from April 30, 1950, within which to file the record and docket the appeal in the said cause.

Dated: At Los Angeles, California, this 26th day of April, 1950.

/s/ HUGH HUNTER,  
United States District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1950. [92]



[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court:

1. Information.
2. Motions, if any, to dismiss information and order of Court therein.
3. Plea of defendants to said information.
4. Such necessary recitation of impanelment of jury to show a jury trial was had.
5. Court Reporter's transcript of all the testimony and proceedings of the trial, Court reporter's transcript of proceedings on the settlement of instructions, and the instructions given and refused.
6. Certification of all exhibits and/or photostatic copies thereof.
7. Order of Court denying motions for acquittal and judgment of dismissal, at the conclusion of the evidence of the prosecution and at the conclusion of all of the evidence in the case. [94]
8. Motions for New Trial, and Arrest of Judgment, and Orders of court thereon.
9. Judgments and Sentences and Reporters' Transcript thereon.
10. Notice of appeal.
11. Designation of Points relied on.

/s/ JOHN J. IRWIN,

/s/ OTTO CHRISTENSEN,

Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed May 23, 1950. [95]

In the United States District Court, Southern  
District of California, Central Division

Honorable Harry C. Westover, Judge Presiding.

No. 21165 Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN L. CARTY, H. W. McCORMICK, EU-  
GENE DOUD, JAMES R. DOUD, VINCENT  
DOUD, RAYMOND E. FARRELL, JAMES  
D. McCORMICK, ROBERT MAULHARDT  
and EDWARD C. MAXWELL,

Defendants.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California, February 28, 1950

Appearances:

For the Plaintiff:

JAMES A. TOLIN,

United States Attorney; by

SANDER L. JOHNSON,

Assistant United States Attorney.

For the Defendants:

JOHN J. IRWIN,

5658 Wilshire Boulevard,

Los Angeles, California. [96]

JACK E. BEDWELL

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Mr. Bedwell, where do you reside?

A. 60 South Colorama Street, Ventura, California.

Q. What is your occupation?

A. State Fish and Game Warden and Marine Patrol. [5\*]

Q. What do you mean by "Marine Patrol"?

A. Marine Patrol, that has to do with the enforcement of our commercial fisheries laws and the enforcement of all fish and game laws applying along the coast.

Q. Are you also a Deputy United States Game Warden?      A. I am.

Q. In connection with your official duties as Fish and Game Warden and Marine Patrol, what area do you have?

A. The area that I have been assigned is the Ventura-Santa Barbara County area all along the coast.

Q. Do you know the defendants in this case?

A. I know of a couple of the defendants, yes.

Q. Are you aware of the existence of a club, a hunting club, known as the Santa Clara River Game Preserve?      A. I am.



(Testimony of Jack E. Bedwell.)

Q. Where is that located?

A. It is located about two miles west of the City of Oxnard near the mouth of the Santa Clara River.

Q. When did the hunting season open this last year?

A. The first section of the duck season opened on the 21st day of October at noon.

Q. Did you have occasion on the 21st of October to call at the premises of the Santa Clara River Game Preserve?      A. I did.

Q. You stated you are familiar with the [6] premises of the Santa Clara Game Preserve?

A. Yes, sir.

\* \* \*

Q. (By Mr. Johnson): Mr. Bedwell, I hand you a photograph marked Government's Exhibit No. 1 for identification and ask you if that represents the premises of the Santa Clara River Game Preserve, as you know it?

A. That represents the larger portion of the area, excluding the buildings of the property on the northwest corner of the property.

Mr. Johnson: The government offers this in evidence as Government's Exhibit No. 1.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 1.)

Mr. Johnson: May I pass this to the jury at this time? [7]

\* \* \*

(Testimony of Jack E. Bedwell.)

Q. By Mr. Johnson: Mr. Bedwell, would you say that that, at least in substance, represents the area of the Santa [8] Clara River Game Preserve?

A. I would.

Q. With regard to its layout, including the dikes and roads? A. Yes.

\* \* \*

Q. I have drawn on there or, rather, I put on there some arbitrary designations of my own. I refer to the middle dike and cross dikes Nos. 1, 2, 3, 4, and 5. Those are for my own purposes so we can agree on what we are talking about, not meaning to say those are the proper designations of the roads.

At any rate, you have testified you were on these premises on October 21, 1949. A. I was.

Q. What were the circumstances under which you were present at that time? Go ahead and tell us about it.

A. On the opening day, the season opening at noon, I was in the area of the Santa Clara River Game Preserve and the McGrath Lake area on a pre-season patrol, checking for [9] early shooters——

Q. I am sorry. Could you speak a little louder, Mr. Bedwell.

A. Checking for shooters, early hunters, in that area.

Q. The hunting season opened at what time?

A. It opened at 12:00 noon.

(Testimony of Jack E. Bedwell.)

Q. Go ahead.

A. There were several hunters observed in the blinds in the Santa Clara River Game Preserve. I particularly watched two hunters as they came in on the south dike road and came up to their automobiles. They were both observed carrying ducks and they were checked. Their licenses and the duck stamps were in order.

I returned to the Gonzales Road area, which is another road that parallels that south dike road, and observed from that position the duck club. With the aid of binoculars, I was able to observe two hunters in a blind shooting ducks.

Q. Mr. Bedwell, I don't mean to be interrupting and trying to take you from your train of thought, but perhaps I could amplify what I am trying to get at by asking you this question. Did you visit the premises of the Santa Clara River Game Preserve on more than one occasion, that is, on the 21st? A. I did. [10]

Q. What time was the last occasion you visited there on the 21st?

A. The last occasion I had to visit on the 21st was in the evening.

Q. At about what time?

A. About 6:00 o'clock.

Q. What were the reasons for your visiting it at that time?

A. I had heard the comment made by a hunter, who had come in from the club that afternoon, that there had been a few lima beans left on the road.



(Testimony of Jack E. Bedwell.)

Q. Who is that hunter?

A. That hunter was Mr. James McCormick.

Q. What did you do then?

A. I then radioed the patrol car of Warden Spicer and asked if he could meet me.

Q. Whom did you radio?

A. Warden Spicer.

Q. What is his full name?

A. Warden John Spicer.

Q. Go ahead.

A. I radioed his patrol car and asked him if he could meet me at his convenience. We agreed to meet at the Mound Water Company pump, which is near the mouth of the Santa Clara River. [11]

We met, as agreed, and proceeded to the Santa Clara Game Preserve, and there, night having fallen, with the aid of flashlights, we moved out onto the east road.

Q. Where did you enter the premises of the game preserve or club?

A. We entered from the north, came over to the north road dike, proceeded down the dike to the west dike, from the west dike down through the center of the middle dike, and checked blinds and the dikes of the remainder of the club.

\* \* \*

Q. (By Mr. Johnson): Did you then inspect the premises of the Santa Clara Club?

A. We did.

Q. Who was present at that time?

(Testimony of Jack E. Bedwell.)

A. Warden John Spicer and Warden Leslie Edgerton, and myself.

Q. Was it light or dark? A. It was dark.

Q. What did you find the condition of the club to be at that time?

A. We found, along the tops of the dikes, shucked or threshed whole barley. We did not at that time observe any lima beans. [12]

Q. Can you more particularly describe the areas where you found the barley?

A. Down the middle dike and the south crossings and down on the south edges of dikes 3, 4 and 5.

Q. Cross dikes 3, 4, and 5? A. Yes.

Q. Did you inspect or examine this barley?

A. We did, and took a sample at that time.

Q. Did you take a sample? A. I did.

Q. Could you describe the barley that you found?

A. The barley was whole barley that had been threshed. There were no hulls on the barley.

Q. Could you describe for the court and jury the manner in which it was placed upon the premises, the barley?

A. It had the appearance of having been strewn or scattered, some areas not quite as heavily as others, and in other areas it was thick enough where we had obtained the samples to scoop it up with our hands.

Q. What did you do then?

A. Having taken the sample, we returned to our

(Testimony of Jack E. Bedwell.)

automobile, and Warden Spicer then contacted Captain Fred Hecker, his immediate supervisor, on the alleged violation.

Q. Just tell things that you know of your own knowledge, what you did and saw. [13]

A. We returned to the automobile and returned to our home.

Q. Did you subsequently have occasion to visit the premises of the Santa Clara Game Preserve?

A. We did.

Q. When was that?

A. Approximately 7:00 o'clock the following morning, October 22.

Q. I forgot to ask you. Excuse me for going back a bit. You stated you took a sample of this barley you found on the premises of the club.

A. I did.

Q. What did you do with your sample?

A. I placed it in a glass jar, affixed a sticker or identification to it, and put the date on.

Q. And what? A. And affixed the date.

Q. What did you do with the sample after that?

A. I turned it over to Warden Spicer, and where it is now, I don't know.

Q. You are not sure. You were referring to 7:00 o'clock the following morning, which was the 22nd of October. Will you tell us what occurred at that time, if anything?

A. I met with Mr. A. W. Elder, Warden Leslie Edgerton, Warden John Spicer, and Warden Ernie



(Testimony of Jack E. Bedwell.)

Bedwell [14] at Ventura. We proceeded in each of our vehicles to the Santa Clara Game Preserve.

Q. Did you immediately go the club?

A. We parked our cars at the Santa Clara River Gate, left our cars there, that is our cars, meaning Warden Spicer, Warden Ernie Bedwell, and my car, at that point.

We proceeded on or I proceeded on in Warden Leslie Edgerton's car. Warden Ernie Bedwell, John Spicer, and Mr. Elder proceeded in Mr. Elder's car to a point near the Santa Clara River Game Preserve, parked the car in the willows——

Q. Where are these willows with regard to the club?

A. They would be at the northeast corner, at the right of the east road. In that representation, it would be in the northeast corner of the blackboard.

Q. That would be right in here?

A. Approximately so, yes.

Q. In other words, it was the northeast corner of the club premises?      A. Right.

Q. Go ahead and tell us what happened then, if anything.

A. From there, the four of us observed the club area and were able to——

Q. This was about what time, again? [15]

A. It was about 7:00 o'clock in the morning.

Q. Was it light?      A. It was.

Q. You say you observed. What did you observe?

A. Through the aid of the binoculars, we were

(Testimony of Jack E. Bedwell.)

able to observe about 10 or 12 hunters. They were moving around from dike to dike and from blinds, going out picking up birds. They were observed shooting and birds falling from the air. Warden Spicer and Mr. Elder then proceeded south on the east road to a point opposite the south road dike.

Q. Were you able to see Mr. Elder and Mr. Spicer driving?           A. I was.

Q. Were you able to see them stop at this point on this east road to which you have referred?

A. I did.

Q. And that is the road on the east end of the premises of the club line?           A. That is right.

Q. What else did you personally observe?

A. The occupants of the car got out on the right side of the car and had a conversation with a hunter——

Q. Where did they stop their car?

A. At the intersection, right near the south road dike. [16]

Q. That would be here?           A. Yes, sir.

Q. You were observing all this yourself?

A. Through the binoculars, yes.

Q. Go ahead and tell us what you observed.

A. I observed the occupants of the car get out and go to the right side and talk with a hunter who had come from the south road dike.

Q. Had you seen this hunter walk up towards the car?

A. The hunter was walking out east on south road dike.

(Testimony of Jack E. Bedwell.)

Q. That would be along here?

A. That is right.

Q. And he met Warden Elder and Warden Spicer at this point?      A. He did.

Q. What else did you observe, if anything?

A. It appeared that they had a conversation. The occupants of the car, the two men, got back into the car and drove, continued on south on the east road dike towards Gonzales Road.

Q. Where is Gonzales Road?

A. Gonzales Road would be at right angles to east road.

Q. That would be this road? [17]

A. That's right, and running east and west.

Q. In other words, that is a road running east and west below the premises of the Santa Clara Club?

A. That is a main paved road, yes.

Q. What did you then observe, if anything?

A. I observed the hunter, after the car had pulled away, go out across east road into the field adjacent, which would be the east side of the club area, not on the club itself, and pick up a wounded bird.

Q. Did you see him picking up the bird?

A. I could see the bird being picked up.

Q. Were you using the binoculars?

A. I was.

Q. Go ahead.

A. He then proceeded back to the south road dike and walked west on south road dike.



(Testimony of Jack E. Bedwell.)

Q. That would be this right here?

A. That's right, and came over to what appeared from that angle to be dike No. 4.

Q. That is right here? A. Right.

Q. What did you then observe?

A. I observed that hunter have a conversation, it appeared that he was, with other hunters near the blinds in that area. [18]

Q. Where are these blinds located, if any, on the club? You referred to blinds.

A. They are principally located just north and south of the intersection of those dikes.

Q. You mean the cross dikes?

A. Yes. They are located on the cross dikes north and south and not quite the middle of each numbered dike.

Q. In other words, there is one north and one south of the dike on each crosswalk?

A. Yes.

Q. Go ahead and tell us what you observed. Could you speak up a little louder, please?

A. The hunter that had been observed contacted the two hunters in the blind on dike No. 4. He then moved north on dike No. 4, and it appeared that he was contacting a couple of other hunters near the middle dike that had come up to him at that time on dike No. 4. From there, the car that had pulled away from south road dike was observed——

Q. What car is that?

A. That is Mr. Elder's car.

Q. Go ahead.

(Testimony of Jack E. Bedwell.)

A. Driving west on Gonzales Road. It had turned in apparently to the main entrance of the property near the buildings and was observed parked near the triangular section on the south-west corner of the club. [19]

Q. You mean right in this area there?

A. Right in that area there. I don't know exactly where the car was in that particular area.

Q. Did you see the car drive into the area?

A. The car was observed as it had come to a braking stop. I didn't see it driving, but I saw it coming to a stop.

Q. What else did you observe, if anything?

A. The occupants of the car got out and proceeded.

Q. Could you see who the occupants of the car were?

A. They were Warden Spicer and Mr. Elder.

Q. Did you see them?

A. They were observed and the clothing that they were wearing. They were distinguishable.

Q. You had binoculars?           A. Right.

Q. Go ahead.

A. They were observed to get out of their car, and just as they got out of their car, another car traveling west on south road dike was seen to come up near their car.

Q. That would be right along this road here?

A. I don't know whether they were on the road or not. It looked like he was coming toward the car

(Testimony of Jack E. Bedwell.)

either from that road or parked in the same adjacent district.

Q. Go ahead. [20]

A. He pulled up along near Mr. Elder's car, and Warden Spicer was observed going to the back of this car and removing birds.

Q. Could you see what they were he was removing?

A. At that distance I couldn't distinguish. It appeared to be a number of birds. He then placed the birds in Mr. Elder's car, and the occupant of this car got out and Mr. Elder was observed writing.

Q. You could see that from where you were?

A. From where we were. We had not received at that time a pre-arranged signal for us to move, that is, Warden Edgerton and Warden Ernie Bedwell and myself, to come out from the willows towards the club at that time. There were four hunters observed coming east on the middle dike toward the east road. They were walking out of the club area.

Q. That would be this middle dike here?

A. They came from the area around dike 4, moving out on middle dike toward the east road.

Q. That is this road here you refer to?

A. Yes. We then decided, the three of us, that we should proceed south on east road and intercept the four hunters who were coming from the club. The other two wardens and myself, in Warden Edgerton's car, proceeded south on east road to the intersection of middle dike, and the east road.

Q. That is right here? [21]



(Testimony of Jack E. Bedwell.)

A. We parked right there. The four hunters then were right about the middle of the intersection of —middle road dike, between the fifth dike and east road. They were observed carrying their shotguns and ducks.

Q. Did they have any birds?

A. They had ducks they were carrying out of the club.

Q. What did you then do, if anything?

A. I heard the conversation that took place between Mr. Carty and Warden Ernie Bedwell.

Q. You have mentioned Mr. Carty. Was Mr. Carty among this group of hunters?

A. Mr. Carty then, as he came across the middle dike, was identified, or I was able to identify him as Mr. Carty.

Q. You knew Mr. Carty?

A. I knew him. I did not recognize any of the others at that time.

Q. Had you parked the car somewhere in that area?

A. We were parked right near that little gate that is on the middle dike as it comes off of the east side.

Q. What occurred after the hunters came up the middle dike, as you testified?

A. The conversation that I heard——

Q. Was there a conversation?

A. Yes. It was started by Mr. Carty.

Q. What was said during that conversation? [22]

(Testimony of Jack E. Bedwell.)

The Court: You may go on.

Q. By Mr. Johnson: What did he say?

A. He said, "Well, Ernie, it looks like——"

Q. Who is Ernie, by the way?

A. Ernie Bedwell.

Q. He was with you, along with Edgerton, as I understand it?

A. Yes, he was with us. He said, "Well, Ernie, it looks as though we are honored by the entire patrol force."

Warden Ernie Bedwell's reply was, "Not quite, Ed."

Q. Was there any further conversation?

A. There was.

Q. Go ahead and tell what that was.

A. Mr. Carty then said, "It looks like there is no better time than now to try this matter in court regarding baiting of ponds."

That is all the conversation that I heard at that time.

Q. What did you do then, if anything, you yourself, personally?

A. We waited a time, expecting to receive the pre-arranged signal from Mr. Elder. That not being forthcoming, Warden Edgerton got into his [23] car, drove south on east road, west on Gonzales Road, and drove to the position where Mr. Elder's car was parked.

Q. Did you see him arrive over there?

A. I saw his car pull up and stop.

(Testimony of Jack E. Bedwell.)

Q. What were you doing in the meantime, if anything?

A. Well, the three hunters, that is, the other three hunters, were standing off to one side. Mr. Carty was standing on the other side of the other three hunters, and they apparently were in conversation. There was nothing done at that particular moment. We were awaiting the reply from Warden Elder as to whether we should seize the birds and take the names of the men that were there.

Q. What then occurred, if anything?

A. Warden Edgerton returned and said it was going to be necessary for us to take the birds and to take the name of each man present, which was done.

Q. What did you personally do?

A. I took the names of two of the individuals and made identifying, or identification tags, and placed them on the birds taken from each hunter.

Q. How many birds did you take from these hunters?      A. Five birds from Mr. Carty.

Q. Just a moment. Were there four hunters and Mr. Carty, or how many were there?

A. There were three hunters and Mr. Carty. [24]

Q. What did you do then? Go ahead.

A. There were five birds taken from Mr. Carty, and 15 birds taken from the other hunters.

Q. What kind of birds were these?

A. They were identified as——

Q. Who identified them?



(Testimony of Jack E. Bedwell.)

A. Well, a general identification as ducks.

Q. You are familiar with waterfowl that are commonly shot by hunters in the California area?

A. I am.

Q. What kind of birds were they, from your experience?

A. The majority of the birds were sprigs.

Q. What is a sprig?

A. The genus or species, I don't know.

Q. It is a duck, isn't it?

A. It is a duck, yes.

Q. What happened then, if anything?

A. The birds were all tagged and placed in Warden Edgerton's car.

Q. Who placed them there?

A. I and Warden Edgerton placed them in the car, in the back seat of his car. The hunters then got into a black sedan and drove away. Warden Ernie Bedwell and Edgerton and myself got into the—we placed the birds in the car, [25] and we then proceeded west across the middle dike of the club and made a search, or just looked for other birds and for grain.

Q. What did you observe? You say you walked out on this middle dike this way? A. Yes.

Q. How far did you walk? That is going west?

A. Going west.

Q. How far did you walk?

A. We walked to the first intersection, or dike

(Testimony of Jack E. Bedwell.)

5, went south about half way, and came back to the intersection over the middle dike, down dike 4 to the south.

Q. Down this way?

A. Back across to the north, upon dike 4, up to the north, then back to the intersection of dike 4.

Q. Then where did you go from there?

A. Moved west back over to dike 3, and we were looking all in that area.

Q. Did you observe the conditions of those areas where you walked?      A. I did.

Q. What were the conditions of those areas?

A. I observed grain. I recognized it as whole barley. It was on the ground and in the pickle weed, or the weed that grows on the top of the dikes.

Q. I think I forgot to ask you to [26] describe the area, the premises themselves. In addition to the dikes, what was there, if anything, on the premises?

A. The club itself consists of——

Q. No. I am talking about within the dikes.

A. Within the dikes? The dikes are there to impound waters on which the birds and ducks——

Q. Was there water between the dikes? Was there water in the ponds created by the dikes, that is?

A. There was water in the ponds, except in pond No. 5, or in that southeast corner, there was some water, but it was not a full pond.

Q. You were describing the condition of the dikes and the cross dikes and middle dike, as you found them?      A. Yes.

(Testimony of Jack E. Bedwell.)

Q. Go ahead and tell us that.

A. From there, from dike 3, we proceeded back to dike 4 and south on dike 4 to the south road dike.

Q. That is the south road down here?

A. Yes.

Q. What then occurred, if anything?

A. I was standing right beside Ernie Bedwell, and we both observed what later appeared to be a pile of ducks near the intersection of the south road dike and dike 3.

Q. That would be this one?

A. Right there. There was quite a [27] pile of ducks backed up there.

Q. Did you observe any other people on the premises or close?

A. Warden Spicer and Mr. Elder was in the area of dikes 2 and 3. They were searching, looking in that particular area.

Q. Were there any hunters?

A. The hunters at that time had all left the ponds, or left the blinds.

Q. Had you been able to see where they had gone?

A. All I saw was the four hunters that came out the east end of the middle dike. The other hunters, they apparently had gone out the southwest corner of the club.

Q. What occurred after you got down here to the intersection of south road?

A. We then, or I observed a portion of the south road dike as it is there, running east and west, and



(Testimony of Jack E. Bedwell.)

just before that turn in the southwest corner, a strip of the road was covered with lima beans, threshed lima beans.

Q. That would be where, again?

A. Well, just west of the intersection of dike 3 and south road dike. From there west on that south road, west on that north and south road dike.

Q. Would you describe the condition of that road? You say there were lima beans? [28]

A. There were lima beans on the southwest end of the road and at the intersection of dike 3, and from there east on the south road dike and to dikes 5, 4, 3, there was barley in quantity in various spots along the way. It was not all piled or it was not all scattered. There were several spots that were quite dense.

Q. Did you pick up any of the barley at that time? A. I did not, no.

Q. Can you give any further description of the south road?

A. The south road forms the dike on the south side of the club.

Q. I mean the condition of the south dike as to the lima beans that you stated were on there.

A. The lima beans were quite heavy.

Q. Can you tell us approximately how heavy?

A. It appeared from looking at a flat angle, or an angle from the height of a man, it was paved with lima beans. It had a glossy sheen in the morning sunlight.

Q. Can you give us an estimate as to how thick

(Testimony of Jack E. Bedwell.)

it was?           A. I made no estimate, no. [29]

\* \* \*

Q. (By Mr. Johnson): What then occurred, if anything?

A. I, with the use of a kodak, a flash bantam camera, took pictures of the evidence, that is, some of the barley being scooped up, and lima beans, and of the roadway.

Q. Could you describe further the scenes which you photographed? How many pictures did you take?           A. I took eight pictures.

Q. What were the scenes which you photographed?

A. One of the roads, of the strip of lima beans on south road dike, another of a spot where the grain was on the edge of south road dike near the intersection of dike 3, and appearing to have been thrown into the water. There were three pictures—two pictures of Mr. Elder taking a sample of barley, and another picture of lima beans, and a picture of the mass group of birds laid out and the wardens standing behind them. The pictures were all taken on one roll of film and the film removed from the camera and turned over to Mr. Elder at that time.

Q. Mr. Bedwell, did you observe anything else on the premises of the club besides the hunters?

A. Except for the grain that was observed along the dikes and the tops of the dikes on 3 and 4, and the lima beans on the roadway.

Q. But there were only hunters and the various other [30] people you have described?

A. Yes.

(Testimony of Jack E. Bedwell.)

Q. Who else was present when these pictures to which you have referred were taken again?

A. Mr. Elder, Warden Spicer, Warden Ernie Bedwell, Warden Les Edgerton, and they appear in the pictures.

\* \* \*

Q. (By Mr. Johnson): Mr. Bedwell, I show you a photograph marked Government's Exhibit No. 2 for identification, and ask you if that substantially represents one of the scenes which you photographed on the day and in the manner you have described?

A. That was. [31]

\* \* \*

Q. What particular area does this represent, this scene represent, of the premises of the club?

\* \* \*

A. That scene represents the corner of the intersection of dike No. 4 and south road dike.

Q. That was taken with this camera to which you have referred, and at what time of the day, approximately?

A. Well, it was after 8:00 o'clock. The exact minute, I don't know.

Q. What is depicted there represents the conditions as you saw them at that time? A. Yes.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 2.)



(Testimony of Jack E. Bedwell.)

Q. (By Mr. Johnson): Now, Mr. Bedwell, I show you a photograph marked Government's Exhibit No. 3 for identification, and ask you if that substantially represents the scene [32] which you photographed with your camera on the occasion and under the circumstances which you have described?

A. That does.

Q. Where was that particular photograph taken with reference to the diagram?

A. That was taken at the intersection of dike No. 3 and south road dike.

Q. And this represents substantially the conditions as you saw them at the time you took the photograph?

A. That does.

Mr. Johnson: The government offers No. 3 for identification in evidence, your Honor.

The Court: It may be received.

(The photograph referred to was received in evidence and marked Government's Exhibit No. 3.)

Q. (By Mr. Johnson): Mr. Bedwell, I show you a photograph marked Government's Exhibit No. 4 for identification, and ask you if that substantially represents a scene which you photographed on the day to which you have referred and under the circumstances which you have described?

A. That does.

Q. Can you tell us where that scene was photographed from, if you know?

A. That picture was taken near the intersection of dike No. 4 and south road dike, approximately 10

(Testimony of Jack E. Bedwell.)

—between [33] 8 and 10 feet from the intersection of that corner, taken across a portion of the pond.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 4.)

Q. (By Mr. Johnson): I show you a photograph marked Government's Exhibit No. 5 for identification, and ask you if that substantially represents a scene which you photographed under the circumstances to which you have testified?

A. That does.

Q. Who is that in the picture?

A. That is Mr. A. W. Elder.

Q. Where is that picture taken from, what area, if you know?

A. It was taken between dike No. 3 and dike No. 2 on south road, in the lima beans on the dike.

Mr. Johnson: The government offers Exhibit No. 5 in evidence.

The Court: It may be received.

(The photograph referred to was received in evidence and marked Government's Exhibit No. 5.) [34]

Q. (By Mr. Johnson): Mr. Bedwell, I also show you a photograph marked Government's Exhibit No. 6 for identification, and ask you if that substantially represents a scene which you photographed under the circumstances and on the day to which you testified? A. That does.

(Testimony of Jack E. Bedwell.)

Q. Where was that particular photograph taken, if you know?

A. It was taken approximately 10 feet west of dike No. 3 and south road dike. It shows the intersection of the dike and the lima beans.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 6.)

Q. (By Mr. Johnson): I show you a photograph marked Government's Exhibit No. 7 for identification, and ask you if that substantially represents a scene which you photographed under the circumstances and on the date to which you have testified?

A. It does.

Q. Where was that particular photograph taken, if you know?

A. That was taken near the intersection of dike 3 and [35] the south road dike on the lima beans.

Q. Who is the man pictured in there?

A. That is Mr. A. W. Elder.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 7.)

Q. (By Mr. Johnson): Mr. Bedwell, I show you a photograph marked Government's Exhibit No. 8 for identification, and ask you if that substantially represents a scene photographed by you under the



(Testimony of Jack E. Bedwell.)

circumstances and on the date to which you have testified?      A. It does.

Q. Where was this particular photograph taken, if you know?

A. It was taken looking west from dike No. 3 down the road west, showing the lima beans and our parked vehicle.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 8.) [36]

Q. (By Mr. Johnson): Mr. Bedwell, I further show you a photograph marked Government's Exhibit No. 9 for identification, and ask you if that substantially represents a scene which you photographed under the circumstances to which you have testified and on that date?      A. It does.

Q. Where was this particular picture taken, if you know?

A. At the spot where the birds were piled at the intersection of dike No. 3 and south road dike.

\* \* \*

(The photograph referred to was received in evidence and marked Government's Exhibit No. 9.) [37]

Q. (By Mr. Johnson): Mr. Bedwell, you testified this morning that at the time you and Warden A. E. Bedwell and Warden Edgerton left the clump of

(Testimony of Jack E. Bedwell.)

bushes and approached the middle dike down the east side, that is the middle dike, of the Santa Clara River Club, you saw four hunters coming out. Have you thought that over during the noon hour?

A. Yes, I did.

Q. Do you wish to make a statement in that connection? [39]

A. I would like to. At that time there were four hunters and the man whom we identified as Mr. Carty.

Q. So that there was a total of five there?

A. There was a total of five that came off of the middle dike to the east road.

Q. You now wish to correct your testimony accordingly? A. Yes.

Q. That you. Now, Mr. Bedwell, referring to the pictures which were introduced in evidence this morning, and most particularly to Government's Exhibit No. 2 in evidence, I notice that there appears to be a lot of material on the ground there. Could you tell the court and jury what that material was at the time you photographed this scene?

A. That was what I call whole barley, barley that had been threshed.

Q. This particular portion here, what is that? Is that a road, or what is it?

A. That is the intersection of dike 3, it appears—dike 4 and the south road dike.

Q. Dike 4 and the south road dike?

A. Yes.

(Testimony of Jack E. Bedwell.)

Q. Could you tell us what this is over here, this clump that appears to be bushes or something?

A. That appears to be the edge of the pond bordered by dike 4 and the south road, and showing a portion of the [40] impounded water.

Q. Could you see any barley or other material out in that area?

A. It was all along through the pickle weed.

Q. That is what you call pickle weed?

A. Yes.

Q. And grass?                      A. Yes.

Q. Did you notice any other material besides barley, or is there any other material besides barley that we can see in this picture?

A. Not in that spot, no.

Q. In other words, as you recall, that is just barley?

A. That is right. It looks just as it was there, just barley.

\* \* \*

Q. (By Mr. Johnson): Now, Mr. Bedwell, referring to Government's Exhibit No. 3 in evidence, again we appear to have something like a road running along here, and then something running along again up there. Can you tell me what that is along there, along the bottom?

A. That is a portion of the south road dike near dike 3. [41]

Q. This is dike 3 here?                      A. Yes, it is.

Q. And what is the material that is mixed on the ground in this exhibit?



(Testimony of Jack E. Bedwell.)

A. That is both lima beans and barley.

Q. There are both lima beans and barley there?

A. Yes.

Q. Or there were at the time?

A. There were both lima beans and barley at the time.

Q. I note, also, on the picture there are several birds that look like ducks. What birds were those?

A. Predominantly, they were sprigs. On the right of the picture, there is one small goose.

Q. Would that be the one on the extreme right?

A. Of the picture, yes.

Q. That is the one goose that was taken?

A. There was one goose taken.

Q. What kind of a goose was it?

A. That one, I believe, was a cackling goose, a variety.

Q. From whom were these birds taken, if you know?

A. They were taken from all of the hunters that were on the gun club at the time.

Q. And that included the defendants in this [42] case?

A. That included the defendants, yes.

Q. Who is the man first pictured right here?

A. That is Warden R. E. Bedwell.

Q. He is the one who accompanied you down from the clump of bushes onto the premises of the hunting club?

A. That is right.

Q. Who is that man?

A. That is Agent Elder.

(Testimony of Jack E. Bedwell.)

Q. And the man sitting here?

A. He is in the court room.

Q. This man here (indicating)?

A. That is Warden Leslie Edgerton.

Q. He is also a State Game Warden and Deputy Federal Warden?           A. Yes.

Q. And the gentleman on the extreme right?

A. That is Warden John Spicer, who is also a State Warden and Deputy United States Warden.

Q. There is a piece running along more or less the top of the picture, and it looks as though there was water on the other side. What is that piece that runs along the top there?

A. That is the representation of the middle dike that runs through the middle of the club. [43]

\* \* \*

Q. (By Mr. Johnson): Now, Mr. Bedwell, referring to Government's Exhibit No. 4, I think it is properly placed this way, is it not?

A. That is right.

Q. With the number "4," which the clerk has placed on it in the upper right-hand corner?

A. That is correct.

Q. What does that scene represent from the standpoint of the area and conditions, as you recall them?

A. That is a picture taken near the intersection of dike 3 and south road dike and is a picture of what appeared to be a large quantity of barley thrown from the bank into the water. The white

(Testimony of Jack E. Bedwell.)

spots in the water are the whole barley under the surface of the water.

Q. Were there any lima beans in this particular area?

A. Not in that exact spot. On the dike itself, there were lima beans, but not there.

Q. In the area included in the picture?

A. Not in the picture. [44]

\* \* \*

Q. (By Mr. Johnson): Going further and again referring to one of the government's exhibits in evidence, No. 5, I think that I can recognize that as Mr. Elder. We have already identified him in a previous picture. That is Agent Elder there, is it?

A. That is Agent Elder, yes.

Q. What is he doing in the picture?

A. He didn't know at the time I was taking this picture.

Q. This is an impromptu picture?

A. That is correct. He is taking a sample in an aluminum cup of barley and cracked lima beans.

Q. In that particular area pictured here in this photograph, were there both lima beans and barley?

A. There was.

Q. Are there any in this area in the back part?

A. Not at that immediate vicinity, not at that picture, no.

Q. Would you tell the court and jury again just where this particular area is in relation to the premises of the Santa Clara Hunting Club?

A. Well, in the position that the picture was



(Testimony of Jack E. Bedwell.)

taken in this photograph, it is between dike 2 and dike 3 on the south road. [45]

\* \* \*

Q. (By Mr. Johnson): Now, referring to Government's Exhibit No. 6, Exhibit No. 6 in evidence, again we have Mr. Elder, I believe, is that correct?

A. Yes, that is correct.

Q. What is this area over which he is kneeling down here?

A. The foreground of the picture is a representation of south road dike.

Q. And what is he doing in the pictures, if you recall?

A. He is picking up a hand, both hands full of lima beans and barley.

Q. Were there both lima beans and barley in this particular area?

A. Right in that particular spot, yes.

Q. What is this clump of bushes, etc., running out this way into the water?

A. That is the right angle of the dike No. 3 and the south road dike.

Q. Referring to Government's Exhibit No. 7, Exhibit No. 7 in evidence, again we have Mr. Elder, and he appears to be doing something there. Can you tell the court and jury what that represents? [46]

A. The foreground of the picture is a representation of the south road dike looking across the pond between dike 2 and dike 3, and he is taking a sample of lima beans and barley and placing them

(Testimony of Jack E. Bedwell.)

in a Golden State milk carton.

Q. Golden State?

A. I believe that is the name.

Q. What was the material on the ground in that particular area or at that particular area?

A. Cracked lima beans and barley.

Q. Both were in that particular area?

A. They were, yes.

Q. Is this the middle road dike here, just above the water, the main body of the water?

A. Yes, that represents the middle dike.

Q. The light spot is water on the other side?

A. That would represent the pond on the other side, yes.

Q. Referring to Government's Exhibit No. 8 in evidence, it appears to be a road. Could you describe that particular area, where it is?

A. The roadway that runs across the middle of the picture is the south road dike. That is the road that appears to be paved with the cracked lima beans.

Q. I notice two cars parked on the road there. Whose cars are those? [47]

A. The light car on the left is a car of Warden Les Edgerton. The one on the right is that of Agent Elder.

Q. Now, this appears to be a cross dike over here, is that correct? A. That is right.

Q. What cross dike is that?

A. That cross dike is the dike at dike No. 3.

Q. And this curve here, where the road curves,

(Testimony of Jack E. Bedwell.)

where would that be in regard to this diagram?  
The road appears to curve back that way.

A. It curves right off behind where the cars are there in the approximate position it is drawn there. It is right near dike 2.

Q. That is the curve on the diagram?

A. On the diagram, yes.

Q. What was that material that is seen strewn along that road in the photograph?

A. Cracked lima beans and some whole lima beans.

Q. Is there any barley in this particular area?

A. Near the foreground of the picture, there was barley. Not down near the automobiles but more on this end of the dike.

Q. Mr. Bedwell, did you see any cattle in the area?      A. I did not.

Q. Was there any livestock in the area? [48]

A. There was no livestock of any kind observed.

Q. Did you notice any cattle prints or livestock prints there on the lima beans, footprints?

A. No. There were some automobile tracks.

Q. You can see an automobile track here?

A. Yes.

Q. Now, we come to the last of this series, Government's Exhibit No. 9, and again we have pictured Mr. Elder, I believe, and I think that is Warden Bedwell, R. E. Bedwell, the second man.

A. Yes.

Q. And this is Warden Edgerton, is it not?

A. That is correct.



(Testimony of Jack E. Bedwell.)

Q. Where was this particular picture taken, that is, what does the area represent as to that diagram?

A. It represents the intersection of south road dike, on which the birds are stacked, and dike No. 3.

Q. These are the birds stacked here where you found them when you came on the premises?

A. Some of the birds were stacked there by Warden Spicer and Agent Elder.

Q. What did you do, incidentally, with the birds that you had taken from the five people who were entering upon the east road from the middle dike, as you have testified?

A. They were placed in Warden Edgerton's car at the [49] time that we left the area of the middle dike road and east road.

Q. Did you see what happened to them after they deposited them, after they placed them in the car?

A. After the game preserve had been devoided of hunters, there were no other hunters in the area, the birds that were in Warden Edgerton's car were then placed in Agent Elder's car.

Q. Did you see that?

A. I did. I assisted in carrying the birds.

Q. Did you or did you not yourself write out any slips of paper indicating the violations in regard to those you took?

A. I did not. I wrote only the identifying name of the hunter and the birds were tagged as such previous, not at that time when the birds were placed in the car.

(Testimony of Jack E. Bedwell.)

Q. Of those five hunters whom you encountered coming from middle road dike when you first came upon the premises of this hunting club, how many of the defendants were there, or those who are now defendants in this case?

A. I believe there is two.

Q. And who are they?

A. They are Mr. Carty, and the other person I am not positive of.

Q. Can you identify Mr. Carty? [50]

A. I can.

Q. Where is he?

A. He is sitting at the counsel table.

Q. On which side?

A. He is sitting on my left, on the left side of the table, the man on the right.

Q. On your right? A. On my right, yes.

Q. Do you recognize now the other man you encountered at that time anywhere in the court room?

A. Yes, I do.

Q. Which one is he?

A. Mr. McCormick, or Cormack.

Q. Cormack? A. Yes.

Q. Where is he?

A. He is sitting in the left front row.

\* \* \*

Q. (By Mr. Johnson): Is that Mr. Cormack you refer to?

A. That is the man. I assumed his name was Cormack. I may have gotten the pronunciation incorrect.

(Testimony of Jack E. Bedwell.)

Q. But you do recognize him as being in the first row? [51]      A. Yes.

Q. How far in from you in the first row?

A. He is the fourth man from the center.

Q. In your opinion or from your own experience as a game warden, would this material which you found on the premises of this private hunting club tend to allure and attract ducks or geese?

A. I believe that it would, yes.

Q. The people whom you observed hunting ducks as you came upon the premises, were they carrying guns?      A. Yes.

Q. Was Mr. McCormick carrying a gun?

A. He was.

Q. And Mr. Carty?      A. Yes.

Q. Where were the defendants while you were taking these pictures, which have been introduced in evidence as Exhibits 2 through 9? Were they present?

A. There were no hunters or anyone in the area, except the wardens who were present.

Q. How soon after they left were the pictures taken?

A. They were taken practically—well, after making the search of the area, the dikes and the lines, probably a half an hour, three-quarters of an hour after the defendants had—or after the hunters had left the game preserve. [52]

Q. I should have asked this earlier. When you first observed the premises from the clump of willows, did you see any waterfowl in the area?

A. Yes, I did.



(Testimony of Jack E. Bedwell.)

Q. Where were they?

A. They were in the ponds of the club itself.

Q. Did you subsequently have occasion on the same day to visit the Santa Clara Hunting Club?

A. Yes, I did.

Q. What time was that?

A. It was after lunch, some time around 1:00, 1:30, when I returned to the game preserve.

Q. What were the circumstances of that visit? Will you tell that to the court and jury, please?

A. We were returning back to get our automobiles.

Q. Who were "we"?

A. Warden John Spicer and Agent Elder were bringing—I am sorry. Warden Ernie Bedwell and Agent Elder and myself were in Agent Elder's car, and he was bringing us back to our automobiles, which were parked in the river bottom.

Q. Where you left them during the morning?

A. That's right, where we had parked them earlier in the day.

Q. Go ahead.

A. On approaching the Santa Clara game preserve from [53] east road, we observed two hunters, three hunters in the field, in the marsh or in the area of the club. They were observed to have shot——

Q. Will you speak a little louder, please?

A. They were observed to have fired one shot at a bird who was seen to fall. On parking the car at the intersection of middle road and east road, we three then proceeded west on the middle dike out

(Testimony of Jack E. Bedwell.)

to where the hunters were in the blinds.

Q. Where were these blinds located?

A. At the time they had started to move, apparently to pick up their bird, and they were nearer dike No. 3 and on the south portion of dike No. 3, that is south from the middle dike, and in that area, and Agent Elder talked to these hunters.

Q. What did he say?

A. I don't know. I was not present at the time.

Q. You were present there, weren't you?

A. In the area, but I did not hear what was being said.

Q. Go ahead and tell us what then occurred?

A. Warden Bedwell and myself, Ernie Bedwell, walked around dike 3 and up around dike 2, and in that immediate area, and returned as Agent Elder was completing the writing of what appeared to be violation slips for these two hunters.

Q. Did you learn the names of the people at that time? [54]

A. One I recognized the writing as being Mr. Darrell or Mr. Farrell, I believe it was.

Q. You recognized Mr. Farrell?

A. I did not recognize him. I saw the name on the violation slip.

Q. What were the conditions of the premises of the club at that time, if you know?

A. They were the only two hunters present. There was grain on the middle dike and along the dike, between dikes 2 and 3, all along that middle dike, there was whole barley.

(Testimony of Jack E. Bedwell.)

Q. (By Mr. Johnson): Did you hear any conversation at that time?

A. Only the portion that Agent Elder informed the two hunters that the club had been closed, or that the club was to be closed, and they had cited several defendants or several hunters in the morning, and that they were included in the violation, that they had been shooting over the ponds [55] which were baited.

Q. Did you hear any part of the conversation by the people who were cited by Mr. Elder?

A. No, except as we walked away, Ernie Bedwell and I walked toward dike 3, down middle road dike, and this other party, who I didn't know, spoke to——

\* \* \*

Q. Did you hear any conversation by anyone who you are now able to identify, other than Mr. Elder?

A. I am not positive of the identification.

Q. Mr. Bedwell, going back a bit again, if I may, referring to the time when the pictures were taken and the fact that, as you stated, the hunters had already left a short time before the pictures were taken, did any other hunters or automobiles appear in that area during that interim?

A. Yes, there was another car seen to approach the area of the club as we were leaving the club area.

Q. Did they come on to the premises?



(Testimony of Jack E. Bedwell.)

A. I believe that they did, yes.

Q. You didn't speak with them?

A. No, I did not. [56]

Q. You took the pictures before they came on the area?      A. Yes.

Q. Have you ever shot in the area of the Santa Clara hunting club?      A. I never have.

Q. Is it open to the public, to the best of your knowledge.      A. No, it is not.

\* \* \*

### Cross Examination

By Mr. Irwin:

Q. Showing you Defendants' Exhibit A for identification, I ask you if you recognize what that is a picture of?

A. That appears to be the area of the Santa Clara Game Preserve.

Q. You are familiar with the reserve, are you not?      A. The general area, yes.

Q. By the way, how long have you been a warden in [57] that area, Mr. Bedwell?

A. I have been assigned to the Ventura-Santa Barbara County area for the past two years.

Q. Now, when you refer to the south road, where I have my pointer, is that the south road that has been used in that abbreviated diagram on the black-board?      A. Yes.

Q. Take your time. I don't want to mislead you. I [58] want to get something where we can all

(Testimony of Jack E. Bedwell.)

see the perspective of it.

A. That appears to be the curve of the south road dike.

Q. With your permission, and with the permission of the court here, I have in my hand—can we call this south?      A. Yes.

Q. I will put an S here for that. Over here on the opposite side, when we refer to the north side of the premises, where I have my pointer, would that be north in the picture?

A. Relatively north, yes.

Q. I will make a mark indicating north here as the witness has identified it. Then the top of the picture, that would be east, is that correct?

A. The top of the picture would be west.

Q. Pardon me. I will put a W there. The bottom of the picture then would be east, correct?

A. Relatively, yes.

Q. These ridges that you see in the middle of the picture where I have my pointer, and we will identify them by count, the first ridge closest to the west part of the picture, that is a road, is it not?

A. Yes, it is a roadway.

Q. And below that, easterly, there is one, two, three, [59] four, five ridges, and those are dikes running from north to south on the property, is that correct?      A. Yes, that is right.

Q. The last visible line running north and south that way is another road?      A. Yes.

Q. What was it you called that road?

A. We called that east road, I believe.

(Testimony of Jack E. Bedwell.)

Q. That is east road? A. Yes.

Q. The line running east and west appearing to just bisect these ridges that I have just identified, is that what you call the middle dike road?

A. It is the middle dike.

Q. The middle dike, we call it? A. Yes.

Q. That is in the center of these ridges?

A. Yes, approximately in the center.

Q. It runs from east to west?

A. Yes, approximately.

Q. For the purpose of the enlightenment of us all, would you please tell me, if you can, the distances between these dikes? I have my pointer on what we have identified as the first dike from the west of the property. From that dike to the second ridge easterly, which we have identified as another [60] dike, what is the distance between those two dikes?

A. I didn't measure that.

Q. You made no measurements at all?

A. No, I made no measurements.

Q. Have you any present understanding or knowledge as to what is the total acreage involved in the Santa Clara Game Preserve?

A. No, I haven't any idea.

\* \* \*

(The photograph referred to was received in evidence and marked Defendant's Exhibit A.)

Q. (By Mr. Irwin): Do you have in mind my question of a moment ago? [61]

A. I don't know whether you had completed it or not.



(Testimony of Jack E. Bedwell.)

Q. The question is, where were you? Will you take the pointer and show us?

A. I can't show it exactly, because it doesn't show it here, but the relative position to this photograph would be some place over in this area. The road goes across and turns right and across the cattle yard, and the clump of willows is back in this area.

Q. That is to say, you have taken the pointer at a point opposite the northeast corner of what we have designated as the east road and have placed yourself still north and outside the confines of that picture?

A. That is right.

Q. About how far would you say you were from north of the north road here?

A. I would estimate that we were about two-tenths of a mile from where we were in the willows to the fence line or the property line, as I know it. It may not be the true property line but the area where our road goes across the end of the club is about two-tenths of a mile.

Q. In other words, you were about two-tenths of a mile removed from the northeast corner of the intersection of east road and the north road?

A. Approximately that, yes.

Q. It may be helpful for the jury to watch that as we [62] go along in the examination. I believe you stated that on opening day, which was the day previous to the date upon which all of these events have occurred, according to your testimony, that

(Testimony of Jack E. Bedwell.)

the previous day, as I have stated, you were likewise at the Santa Clara Game Preserve?

A. Yes, I was there.

Q. I believe you also stated you had been there prior to the opening of the season?

A. A couple of hours, yes.

Q. You mean a couple of hours before the season opened?

A. Before noon of the day of the 21st.

Q. How long before the 21st had you been there?

A. Only the two hours before.

Q. That is all. Now, on the 21st, how many agents were with you in the immediate area of the Santa Clara Game Preserve on the 21st?

A. On the day of the 21st, prior to the opening of the duck season, which was at noon, I had been there in the company of myself, and Warden R. E. Bedwell of Santa Barbara.

Q. Just the two of you?

A. Just the two of us, yes.

Q. Where were you on the 21st? Let's find out where you were then.

A. There again, the photograph doesn't show Gonzales [63] Road, but it would be at approximately the bottom of the picture and that runs parallel with this east road. Let's get it right here. Gonzales would run along this portion, making a right angle to this east road. In other words, to come into the club, you come in Gonzales Road, travel west, and drive north into the houses of the club proper.

(Testimony of Jack E. Bedwell.)

My position prior to the opening of the season was again in a spot off of the area that this picture covers, in that it would be in the extreme southwest corner, and, while it doesn't show it, off to the left of the picture is what is known as the McGrath ranch, and it was near the buildings of the McGrath ranch property that Warden R. E. Bedwell and myself were parked.

Q. How long were you parked there?

A. I don't know the exact time. Possibly 30 minutes.

Q. You said you arrived there about two hours before the season opened? A. Yes.

Q. You said you were parked there about 30 minutes. Then where did you go?

A. I remained in the area. Warden R. E. Bedwell drove out Gonzales Road, and when he left, he stated that he was going to the McGrath lake area.

Q. So then you remained alone. Are you still off the [64] picture on Gonzales Road?

A. I am back over in this southwest corner of the area.

Q. Did you stay there or did you go someplace else?

A. No. I remained in that particular area.

Q. Until when?

A. Well, until the shooting started on the club at 12:00 noon.

Q. Did you move at any time?

A. I did after the shooting started. I moved



(Testimony of Jack E. Bedwell.)

down into the road that goes into the club.

Q. Very well. Can you place yourself on that picture as to where you went?

A. Well, it is very hazy. The road comes through a gate right here near the foot of this little incline, and there are barns and several buildings and a clump of trees. I was right in this little turn-in or driveway into the barnyard itself.

Q. How long did you stay there?

A. I had observed two hunters coming in on the south dike road, coming up toward the buildings, and they were near the gate when I pulled into the barnyard of the club property.

Q. So did you approach them?

A. I approached them as they were driving out, and one car had started driving out and the other hunter was carrying [65] his limit of ducks, and they were each checked for their birds.

Q. Who checked them?

A. The number of birds, their duck stamp, and their hunting license, as well as a plug in their shotgun.

Q. Are either one of those two gentlemen defendants here today?

A. One I am positive of. The other, I am not sure.

Q. Who is that that you are positive of?

A. The one I had conversation with was Mr. Carty.

Q. You had conversation with Mr. Carty?

A. I did.

(Testimony of Jack E. Bedwell.)

Q. This was on October 21st, right after the season opened? A. That is correct.

Q. You had been watching over here on Gonzales Road since two hours prior to the shooting?

A. Yes.

Q. After the shooting started, you continued to observe this preserve here, and then you came on the premises as these two hunters were coming off?

A. Yes.

Q. And you had a conversation with Mr. Carty?

A. Yes.

Q. What was the conversation? [66]

\* \* \*

The Witness: The conversation consisted of asking of Mr. Carty if he had gotten his limit of ducks, and he said that he had, and he asked me if I had brought my shotgun along and invited me to hunt on the club.

Q. (By Mr. Irwin): Was there not a discussion had with you, between Mr. Carty and yourself, about the beans that were on the premises? [67]

A. I didn't hear anything about any beans being on the premises from Mr. Carty.

Q. Nothing was said to you by Mr. Carty about beans? A. No, sir.

Q. While you were talking to Mr. Carty, did Mr. McCormick come up?

A. I believe that he did, yes.

Q. As a matter of fact, didn't you, with Mr. McCormick, turn around and go out and look over the beans? A. No, that is not correct.

(Testimony of Jack E. Bedwell.)

Q. Are you sure about that?

A. I am positive.

Q. Is it not true in substance and effect that a conversation was had between Mr. Carty, Mr. McCormick, and yourself, wherein they stated to you that the ducks will not eat those beans, they looked kind of bad, maybe we'd better cover them up, and you said that would probably be a good idea?

A. That is not so.

Q. You are sure no such conversation in substance took place between you?

A. Not in my hearing, it did not.

Q. I am talking about your hearing. I also understand you did not emerge from back of this gate and go out here by where these wagons were, right towards where the [68] south road bends? This is on opening day of the season.

A. Not at that time.

Q. How was it that this morning, Mr. Bedwell, on your direct examination, you said a remark by Mr. McCormick about there being some beans caused you to call Mr. Spicer on the two-way radio? Where did you hear that?

A. After I had the conversation with Mr. Carty, I then accosted two hunters who had been observed in the duck club, and there was an arrest made at that time. After the arrest was made, I did go down on the road to a position that represents a group of bean wagons, I think in this picture, where some decoys were placed.

Q. Where is this now?



(Testimony of Jack E. Bedwell.)

A. Right here, the back of one of the wagons on the right of that group of wagons that are parked there.

Q. That would be just west of dike No. 1, we will call it in that picture. Is that the way Mr. Johnson has it marked?

A. It is off more to the south than the west. Right down at the end of the wagon there.

Q. Do I understand you had no conversation with, or Mr. McCormick made no mention of beans, and you made no mention of beans?

A. Not when I first talked to this hunter, who was apparently Mr. McCormick, who was with Mr. Carty. [69]

Q. You know Mr. McCormick, don't you?

A. I know a James D. McCormick, yes. He was the man who was there and mentioned about the beans after I had talked to Mr. Carty.

Q. That is what I asked you a little while ago. Will you stand up, Mr. James McCormick?

That is the gentleman I am talking about.

A. That is not the man I am talking about, until after the conversation with Mr. Carty. That is Mr. James D. McCormick, as I know him.

Q. He is not the gentleman you discussed the beans with?      A. No.

Mr. Johnson: I did not hear the question.

Mr. Irwin: I say, he is not the gentleman that he had a conversation with about the beans, and he said no, sir.

The Witness: He is the man that mentioned

(Testimony of Jack E. Bedwell.)

about the beans after I had talked to Mr. Carty. Not at the time I talked to Mr. Carty.

Q. (By Mr. Irwin): I asked you earlier, Mr. Bedwell, if you talked to Mr. James McCormick.

A. You didn't say Mr. James McCormick. You said Mr. McCormick. I know him only as James D. McCormick, the man who was cited in that earlier arrest.

Q. Will you please tell me what Mr. McCormick said [70] about the beans, whether the name is James D. McCormick, or what it is? You did have a conversation with Mr. McCormick about some beans, didn't you? A. That day I did.

Q. What was the conversation?

A. Mr. McCormick stated that there was a few lima beans on the road that the birds hadn't cleaned up.

Q. What else did he say?

A. That's all at that time about anything pertaining to lima beans.

Q. Didn't he say that looked bad, maybe he'd better take a harrow and cover them up?

A. He did not say that to me.

Q. And you said you thought that would be a good idea?

A. He didn't say anything to me, nor did I make such a statement.

Q. Did you look at them then?

A. I did not.

Q. Did you look at them later?

A. I did later on in the evening.

(Testimony of Jack E. Bedwell.)

Q. I mean during the daylight, while he was there?      A. I didn't.

Q. You didn't go any further onto the premises than where you have put yourself, where you say the decoys were [71] over here?

A. Yes, at the back of the wagon.

Q. That is as far as you went?

A. That is as far as I went at that time.

Q. How far would you have been from where you placed yourself at the intersection of this south road and this first dike here?

A. I did not measure it. I did not pace it off.

Q. Approximate it, will you, please?

A. Forty, possibly 60 yards. As I say, I didn't measure it.

Q. Was there anything to impede your vision from where you were to the intersection of that south road and the first dike there?

A. Only the grass that grows there.

Q. There is no grass on that road there, is there?

A. Not on the road, no; along the edges.

Q. Could you see the road from where you were standing?

A. I could see a portion of the road, yes.

Q. Do I understand it is your testimony that the only thing that was said by either of you is that Mr. James McCormick said, "There are some beans that the ducks haven't eaten," and you made no response?

A. That is the comment he made, yes. [72]

Q. And you said nothing?      A. I did not.



(Testimony of Jack E. Bedwell.)

Q. By the way, what time of the day was this that you had the talk with Mr. McCormick about the beans?

A. It was around 2:00, possibly 2:15.

Q. Did I understand on your direct examination you said it was not until when that you contacted Mr. Spicer?

A. I was not able to get him immediately on the radio. It was around 4:30, possibly a quarter to 5:00, before I was able to make radio contact with Mr. Spicer's car.

Q. Before I leave that subject, I want to be sure of this. I asked you a few moments ago whether or not you had been on the game preserve prior to the opening day of the season, and you said you had not. May I ask you this, whether or not you had been in the environs of the Santa Clara Game Preserve, either in your auto, going around the road here, or observing them, prior to the opening day of the season?

A. Not of the Santa Clara Game Preserve.

Q. Let's put it this way. Were you on the north road?

A. I had been up that way, yes.

Q. How many days before the season opened?

A. I believe it was a couple of days before the season [73] actually opened.

Q. Did you come down around the east, what we will call the east road, too?

A. I may have in a routine patrol. We cover most of the main roads.

(Testimony of Jack E. Bedwell.)

Q. (By Mr. Irwin): You have your notes, do you, which would help tell you whether you were over here or not?

A. I don't have pencil notes from my patrol. No. We keep a diary of our daily activities.

Q. And where you went, do you not?

A. Generally, yes; that is, the general area.

Q. Let's see if I have it. Are you able to tell me positively now that about two days before you had been around the roads surrounding the Santa Clara Game Preserve?

A. I was not in the sense of surrounding it. I was in that area, yes.

Q. Were you just sight-seeing, or were you looking over the grounds?

A. I was not looking over the grounds. I was on patrol for any early hunting that might be going on.

Q. When you were talking this morning about looking through the glasses and seeing these ducks taken from Mr. Carty and other members of the party, you don't want the jury [74] to think there was anything improper in Mr. Carty's having those five ducks in his possession, do you? A. No.

Q. The fact of the matter is, that is the limit, isn't it?

A. That is the legal limit, yes.

Q. How many days can a hunter, who is properly licensed and everything else being in order, how many days may he hunt and collect the legal limit?

A. I don't remember the exact number of days

(Testimony of Jack E. Bedwell.)

of the season. I know he is allowed certain days by the state and some by the federal government. It is 90 days.

Q. Do you know how many days the Santa Clara Game Preserve was operated?

A. No, I was not aware of their schedule of shooting.

Q. You don't know, as a matter of fact, they only operated two days a week?

A. No, I was not aware of that.

Q. I am speaking of prior to this date we are talking about.

A. Any time.

Q. I believe you stated you reached Mr. Spicer around 4:30 on the radio, and where did you meet him?

A. At the Mound Water Company pump.

Q. You will forgive me, but I don't know the country [75] around there too well. Is that near the Santa Clara Club?

A. Well, it is quite some distance from there. It is in the area on the other side or on the north end of the mouth of the Santa Clara River.

Q. That was pursuant to your request on the radio?

A. Yes. I had asked him if I could meet him, or if he could meet me.

Q. I believe you said on direct examination this single remark by Mr. McCormick that the ducks hadn't been eating the beans caused you to ask Mr. Spicer to meet you, you stated, at the pump?



(Testimony of Jack E. Bedwell.)

A. That is what led me to contact Warden Spicer, yes.

Q. Up to that time your testimony is, as I understand it, that you had no information other than that statement of Mr. McCormick?

A. Just that statement that was made.

Q. And your curiosity hadn't been aroused at all to the point where you had gone out to see what he was talking about?

A. My duty at the time was to inform my immediate superior. He, being the senior warden in the district, was notified.

Q. As a matter of fact, Mr. Bedwell, there is quite a difference of opinion as to whether or not lima beans are [76] duck feed?

A. That I am in no position to answer. I don't know.

Q. Is it your considered opinion that lima beans are natural duck feed?

A. They may not be natural duck feed. If they are hungry enough, they will eat them.

Q. If there is other feed available, would you call them a duck feed?

A. It could be considered as such.

Q. It is usually attractive to ducks?

Mr. Johnson: Your Honor, I am going to object to this line of questioning on the following grounds: I think your Honor realizes that the issue here is whether they attempted, and the Act only requires that they attempted to lure, entice and attract the birds by means of feed. Now, whether the particular

(Testimony of Jack E. Bedwell.)

bait used is successful, whether the ducks eat it and enjoy it or not, is of no concern here. The question is whether it might have a tendency. I don't think that the fact that they were unsuccessful in their attempt, if such an attempt is shown to have been made, should be a point in this case.

The Court: Supposing they dumped a lot of garbage on the land?

Mr. Johnson: Under those circumstances, they would be [77] equally guilty, because I think your Honor is aware of the fact that hunters who are hunting in an area must investigate, and they then proceed at their own peril. If there was garbage on that area which might itself attract birds, they were violating the law.

The Court: I think the law is feed scattered as to constitute to such birds a lure, attraction, or enticement.

Mr. Irwin: That is my understanding of the law, your Honor.

The Court: I think you are going to have to show, or at least convince the jury, that whatever was scattered there was a lure, attraction or enticement. I think that is a question of fact.

Mr. Johnson: I think it is as to whether it has a tendency to, but I still think——

The Court: I don't think the law says "has a tendency to," does it?

Mr. Johnson: It has to have a tendency to lure, attract or entice the ducks.

The Court: No, it says "other feed that has been

(Testimony of Jack E. Bedwell.)

deposited, distributed or scattered so as to constitute for such birds a lure, attraction and enticement.”

I don't see anything about tendency.

Mr. Johnson: But I think it is a question of tendency, and it is not a question of whether he will eat it. [78]

The Court: I think that is a question for the jury. The objection is overruled.

\* \* \*

Mr. Irwin: Will you read the question, please?

(Question read by reporter.)

The Witness: That I don't know.

Q. (By Mr. Irwin): I am going to ask your assistance, please, Mr. Bedwell. Referring again to defendant's Exhibit A, let's take the first day the hunting season was about to open, and then it opened, and you are over here on Gonzales Road. I take it you had your glasses with you on that day? A. Yes, I did.

Q. You were observing the premises? [79]

A. Yes.

Q. You saw ducks there? A. I did.

Q. Will you tell us numerically where the ducks seemed to be most congregated?

A. There was no general congregation or mass of ducks on any one of the ponds.

Q. Would you say that they were evenly distributed?

A. I did not count each bird to find out how many there was on one pond or the other.



(Testimony of Jack E. Bedwell.)

Q. As a matter of fact, isn't it true that the ducks were congregated down toward the east end of the game preserve where the fresh water was running?

A. There was possibly more birds down there than there was on the other end of the club.

Q. I have put my ruler towards the southeast in the picture between dikes 4 and 5, between what we have called the center road dike, and the north road dike. Do I understand you to say it is possible there were more ducks there than elsewhere?

A. No. In the general east area. I don't know whether there was too many over in that pond there or not.

Q. But you will go far enough to say with me that at the east end there seemed to be more ducks congregated than elsewhere on the preserve? [80]

A. It had that appearance. I didn't see any great concentration up there.

Q. By "up there" you mean what?

A. In the northwest corner.

Q. Did you see any great concentration of ducks up here in the southwest corner?

A. I could just barely see the top of what appeared to be the dike from the position that I was parked.

Q. Then we come to the second morning, which will be the morning of the 22nd. On that occasion, you were over here, as we have said, north of the north boundary of the preserves as they appear in

(Testimony of Jack E. Bedwell.)

Defendant's Exhibit A, and likewise you had your glasses, as you have testified to. Did you notice the concentration of ducks on that morning?

A. There were birds generally all over.

Q. Would you say they were concentrated more on the east end than on the west end?

A. No. Most of the birds were flying. They didn't seem to be feeding.

Q. What kind of a camera was it that was used in the taking of those pictures which have been identified as Government's Exhibits 2 to 9?

A. An Eastman Kodak, Flash Bantam, and an F. 45 lens.

Q. That is what we call a telescopic lens?

A. No, it is not a telescopic lens. It is just [81] the average camera.

Q. There was no extension on it at all?

A. No extension or filter.

Q. And I understood you to say Exhibit 3 was taken from the south road near dike 3?

A. Yes.

Q. Exhibit 4, as I understood your testimony, was taken at the intersection of dike 3 and the south road dike, is that right?

A. It was near dike 3. It was not at the intersection of it.

Q. How far away would you say the area represented by Exhibit 4 was from the area represented by Exhibit 3, or do you remember?

A. I didn't step it off. I don't remember just how far it was.

(Testimony of Jack E. Bedwell.)

Q. You do say, however, that it was near the intersection of dike 3?      A. Yes.

Q. We will skip 5 for the moment. Your testimony was Exhibit 6 likewise was taken, showing Mr. Elder here, at south road dike at right angles with dike 3?      A. Yes.

Q. And picture No. 8, I believe the testimony was that is looking toward the intersection of dike 3 with south [82] road dike?

A. On the south road dike, yes.

Q. So that, to recapitulate, Exhibits 3, 4, 6, 8, and let's take No. 9, too—withdraw that question.

As I understood your testimony, Exhibit 9 likewise is taken at the intersection of south road and dike 3?

A. That is where the birds were placed.

Q. So, to recapitulate, Exhibits 3, 4, 6, 8, and 9 all represent the same area?

\* \* \*

A. Yes. 3, 6, 8—well, 8 shows the intersection of 3.

Q. That's right; and 9?      A. And 9.

Q. How about 4?

A. Four is near the intersection. It does not show the intersection. It is just a portion of the edge of the pond.

\* \* \*

Q. Substantially the same area? [83]

A. In the relative area.

Q. All right. That leaves us now with Exhibits 5—it just leaves 5. You didn't cover 5. That Ex-



(Testimony of Jack E. Bedwell.)

hibit 5, I believe your testimony was that that was between dikes 2 and 3 on the south road.

A. That was near the intersection of the south road.

Q. Then that was likewise near the same intersection as these exhibits we have discussed?

A. Yes. It was taken at a different angle. That is a head-on picture of Agent Elder near the same spot as picture 6.

Q. So then we can put 5 in with that group, too, because those pictures are all in the same area?

A. Generally, yes.

\* \* \*

Q. Where do you say that is, Exhibit No. 7?

A. That is taken on the south road dike, between dike 3 and dike 4, I believe.

Q. How far away is 7 taken from the area of 3, 4, 6, 8 and 9, which we have agreed are roughly in substantially the same area? [84]

A. I think it was about three or four, possibly five feet, or steps or paces, between the pictures as they were taken. They are not taken at the exact same spot.

Q. But, if I understand you correctly, three or four or five steps would be taken in a radius of from where I am standing to the first chair over there, would you say?

A. All of the pictures were taken from the same side of the dike and approximately five paces or maybe 10 feet distance between where these shots were taken.

(Testimony of Jack E. Bedwell.)

Q. In other words, the shots were within an area of 5 to 10 feet, one shot from the other, is that right? A. Yes.

Q. Would that also be true of 2?

A. Two was taken at the intersection of dike No. 4.

Q. But the balance of the exhibits, from 3 to 9, we were agreed were taken within a radius of 5 to 10 feet?

A. All of them were taken in that same area, but between each of those pictures there was a distance of approximately five paces or 10 feet.

Q. Let's take 5 and 7 here. Were they taken at the same time? By the same time, I mean while he was in the act of doing the same thing at the same spot?

A. No, he had moved west of the road when No. 7 was taken. He moved down west on south road and took the sample.

Q. Take Exhibit 7. In No. 7, we have a clear view [85] of the pond right behind us. He is right close to the grass on the edge of the pond. In 5, however, he is now bending over, yet in the same proximity to the pond, the same proximity to the seeds. Would you not say it is possible that those were different shots of the same act while he was in a slightly different pose?

A. No, they were not.

Q. I would like to clear up a matter, Mr. Bedwell. Is there anything in the regulations that prevents a club from putting out feed prior to the

(Testimony of Jack E. Bedwell.)

opening of the hunting season?                   A. No.

Mr. Johnson: Your Honor, I object to the question on the ground that that is a question of law, which only this court can decide.

The Court: Sustained.

Q. (By Mr. Irwin): One other question. From your experience, are you able to tell, if you see a few grains of barley on the ground, whether it has been there one day, a week or 10 days?

A. No, I have no way of determining how long it had been there.

Q. I don't pursue that line. I believe you stated that you yourself haven't any personal understanding as to the entire extent of the acreage involved in this Santa Clara [86] Game Preserve?

A. That is right. [87]

### Redirect Examination

By Mr. Johnson: [88]

\* \* \*

Q. Would you come over here, please? I will hand you Government's Exhibit No. 2 and give you a red pencil, and with this red pencil will you please approximate, to the best of your recollection, just where that particular picture or the scene portrayed in that particular picture is?

Mr. Irwin: Pardon me, Mr. Johnson. Might I suggest again, because the jury might want to look at the exhibit, that we mark them north and south and east and west, which you have not done with that picture?



(Testimony of Jack E. Bedwell.)

Q. (By Mr. Johnson): Is this north, approximately this way, along the same direction as east road?

A. Yes.

Q. In other words, the direction in which the road is going, that would be north up here, and I will put "N" there. Is that correct?

A. Yes, that is correct.

Q. This is approximately east over here? [89]

A. Yes.

Q. And this is approximately west over here?

A. Yes.

Q. And this is approximately south, correct?

A. That is right. [90]

\* \* \*

Q. Mr. Bedwell, did you have the opportunity to finish your job of setting out on the photograph, Government's [94] Exhibit No. 1 in evidence, the location of the scenes depicted in the photographs marked Government's Exhibits 2 through 9?

A. Yes.

Q. You have completed that. Now, is every one of those scenes as you have marked them on the photograph in the location stated by you to counsel for the defense yesterday?

A. No, they are not.

Q. Which one, if any, has been changed?

A. The picture that is depicted on the diagram here as No. 3 was stated originally to have been on dike No. 3, and on reviewing and laying the pictures out, the birds were not piled at the intersection of dike No. 3, but they were on dike No. 2,

(Testimony of Jack E. Bedwell.)

which shows from that picture No. 3, a portion of the roadway.

Picture No. 9 is taken—No. 8, rather, is taken from near the—closer than is actually marked here, because of these other spots or marks on the picture. It was taken nearer dike No. 3 and looking west toward dike No. 2, where the birds were placed.

Q. In other words, you could tell by looking again at No. 8 that the ducks which were depicted in 3 were, in fact, by this particular dike here, which you say is No. 2?      A. That is right.

Q. So you made the change accordingly?

A. That is marked on the large photograph. [95]

Q. Now, I notice that in this photograph you have little squares and that would indicate in your mind the approximate location of the scene depicted in the particular photograph?

A. In a relative area, yes. It is not true to scale.

Q. I notice, also, you have drawn an arrow pointing toward the particular square representing a photograph or scene, and that there is a dot at the end of the arrow. What does that indicate?

A. Well, I placed myself at the dot and the direction of the arrow indicates the direction in which the picture was taken.

Q. And the numbers under each one of these refers to the particular exhibit or picture, is that correct?

(Testimony of Jack E. Bedwell.)

A. Yes, to the best of my knowledge. As I say, it is not according to scale.

Q. I notice that on 1, there is a large red—these are drawn in red pencil, I see. A. Yes.

Q. I notice in 1, there is a large area outlined in red. Is that a photograph?

A. That represents the photograph.

Q. Which number is it? A. No. 8.

Q. That is No. 8? [96] A. Yes.

Q. What does the jagged end on the square indicate, or on the figure?

A. Well, I placed the wavy line on the back of each rectangle to indicate that it goes into infinity. In other words, there is no line of demarcation there. The picture just goes out into space.

Q. In other words, the horizon is shown?

A. That is right. It is not close up, very.

Q. So that is it correct, for example, that if you were taking a picture at this particular dot, facing in that direction, the picture shows a scene of the road ahead and going on into the horizon, and that is indicated by this jagged line, is that correct?

A. Yes, that is right.

Q. And you have done likewise with these others?

A. That is right, except on those that are indicated, 5, 6, and 7, which are close-up shots and show very——

Q. Very little background?

A. Very little background, yes.



(Testimony of Jack E. Bedwell.)

Q. You have got all 8 of the pictures entered on there, have you?

A. All 8 of the photographs that were taken are posted. [97]

\* \* \*

Q. (By Mr. Johnson): Now, Mr. Bedwell, on the 21st of October, when was the first time you learned about there being any lima beans?

A. In the afternoon around 2:00, 2:15. The exact time that the conversation was heard by Mr. McCormick was not noted.

Q. Did you see the beans at that time?

A. No, I could not.

Q. And in accordance with your instructions, as you testified, you went ahead and radioed Mr. Spicer?

A. I radioed from my car and asked Warden Spicer to meet me there at a spot at his convenience.

Q. Was this in accordance with policy and instructions agreed upon among the wardens?

A. That is correct. At any time we had run into anything, that we were to contact Warden Spicer, who is the senior warden of the district, and to notify him of any violations or of any activity that we should investigate.

Q. You also testified on cross-examination that perhaps a couple of days before the season opened, you had been driving out on the north road on another matter, that is the north road of the club premises, and that you had also, perhaps, driven

(Testimony of Jack E. Bedwell.)

on the east road. Did you on either of those [98] occasions see any lima beans or barley on the premises?

A. No. I was really not looking for any particular thing on the club or any other club in the area.

\* \* \*

Recross-Examination

By Mr. Irwin:

Q. With reference to that last question, Mr. Bedwell, isn't it true you cannot drive along the north road without seeing the ponds of the Santa Clara Game Preserve?

A. You can observe water and dikes of that property.

Q. Coming now again to this radioing Warden Spicer, I don't believe I quite have it clear—perhaps it is my fault—as to what time it was after leaving Warden Spicer that you made this nocturnal inspection with a flashlight?

A. It was after 5:45, nearing 6:00 o'clock.

Q. How much after?

A. About 5:45, between then and 6:00 o'clock. I didn't exactly mark the time or note the time as we went out to the duck blinds.

Q. What time was it you radioed him?

A. I was not able to contact Mr. Spicer until after 4:00 o'clock.

Q. I believe yesterday you said 4:30.

A. Well, it was after 4:00 o'clock.

(Testimony of Jack E. Bedwell.)

Q. How long after you made contact did you meet him? [99]

A. About 4:45, possibly 5:00 o'clock.

Q. He was in the immediate area then?

A. No, he was not in the immediate area. I did not know where he was.

Q. Do I understand arithmetically, then, it was between 15 minutes and a half hour after you established radio contact that he met you?

A. I can't say that. I don't know.

Q. What is your best estimate?

A. Possibly a half an hour.

Q. How long did this inspection by flashlight take the two of you?

A. That I don't know. I didn't time it.

Q. You made no record?

A. Other than I took a sample.

Q. I mean a record in your diary, as to what you were doing that day?

A. I did of the work that I did that day, but I did not time the amount of inspection that we made on the duck blinds that night.

Q. Well, was it 15 minutes?

A. It could have been.

Q. Could it have been less than that?

A. No.

Q. Could it have been a half an hour? [100]

A. Possibly that, yes.

Q. Was it more than a half an hour?

A. I can't say.

Q. You wouldn't say it was an hour?



(Testimony of Jack E. Bedwell.)

A. I did not say one way or the other, whether it was or not.

Q. I know you haven't, but I am trying to find out, Mr. Bedwell.

A. I did not time it. I don't know.

Q. You have been very accurate and precise on other matters here, Mr. Bedwell. This is quite important. Will you now try and search your recollection and please tell us, as nearly as you can, whether it was closer to 15 minutes or closer to a half an hour that you spent on this with your flashlight? A. Possibly it was 45 minutes.

Q. Any more? [101]

\* \* \*

### Redirect Examination

By Mr. Johnson:

Q. Mr. Bedwell, you testified on direct examination that when you made this nocturnal visit, using the flashlight, you took samples of what you thought was barley that you found on the premises of the Santa Clara club, and that you later gave that to Mr. Elder, I believe it was. A. That is correct.

Q. Will you again describe the sample that you took, that is, the receptacle in which you placed the sample?

A. I took two handfuls of barley and placed it in a glass jar.

Q. Did you do anything else to the glass jar?

A. Yes. I affixed a mark of identification or a tag in the form of a gummed label across the front of the jar. [102]

(Testimony of Jack E. Bedwell.)

Q. Now, then, Mr. Bedwell, I hand you an object marked Government's Exhibit No. 10 for identification, and ask you if that is the jar, and the label, and if its contents are those to which you have referred in your testimony as being the sample that you took at 6:00 p. m. on the night of October 21.

A. That represents the pocketful of barley that I had taken from the Santa Clara game preserve on that night, yes.

Q. To the best of your recollection, is that the same bottle that——

Mr. Johnson: I am sorry. Didn't you hear, counsel?

Mr. Irwin: No, sir. May I have that read?

(The answer was read by the reporter.)

Q. (By Mr. Johnson): That was two handsful?

A. That was two handful, yes.

Q. Is this the bottle, as you can best remember, that you put it in?

A. That is the bottle.

Q. Is this your printing on the label of the bottle? A. That is.

Q. Is that your signature there?

A. That is the way I normally sign.

Q. I notice it says "7:00 p. m." To what does that time refer? [103]

A. That refers to the time that the sample was taken.

(Testimony of Jack E. Bedwell.)

Mr. Johnson: The government offers this in evidence, your Honor, as Exhibit No. 10.

The Court: It may be received.

(The item referred to was received in evidence and marked Government's Exhibit No. 10.) [104]

\* \* \*

### Recross Examination

By Mr. Irwin:

Q. With reference to this Exhibit 10, which has just been offered here — by way of preliminary first, on this evening of the 21st, when you and Mr. Spicer came on the preserve, would you tell me again where you entered the preserve?

A. We drove through the gate and on what is known there as the north road dike. It is not on the property, but it is outside of the fence. The north road dike is shown in this first line and on this photograph. The road is outside of that property. We moved west to the northwest corner and parked near the northwest corner of the club. We came on to the club property on what is shown as the west dike, out to the middle dike of the club property. That is where we entered, from the southwest corner.

Q. Then where did you go?

A. We moved from the northwest corner to the middle dike, down the middle dike, and back and



(Testimony of Jack E. Bedwell.)

forth on what we know as dike 1, on the north and south side, on the middle dike, the north and south side, continued on the north and south sides of dike 3, 4 and 5.

Q. You said earlier that in compiling this sample, that this was from the pocketful that you picked up. Do I understand that as you went along you picked up a few grains here and a few grains there and put them in your pocket? [105]

A. No.

Q. What did you do? Did you pick these all up in one spot?

A. I picked that all up in one spot.

Q. Where was that spot?

A. To the best of my recollection, it was near the intersection of what we know as the middle dike and near dike 2.

Q. Was it all as clear as this when you picked it up and put it in your pocket, or did you sift it after you got back before placing it in the bottle?

A. That represents everything that was placed in my pocket.

Q. Notwithstanding it was dark and everything, you were able to pick it up in that condition?

A. I picked it up just like that in two hands.

Q. And you did not sift it or alter it in any way?

A. No, I did not.

Q. Did your excursion take you over here on the south road?

(Testimony of Jack E. Bedwell.)

A. Yes. We came across on dike No. 2, back to the middle dike, and across dike No. 3 to the south road dike.

Q. These exhibits having been previously shown to the jury, I just want to lay this one, No. 8, right here.

Do I understand now from you that this Exhibit No. 8 is [106] taken roughly from about the point where I have the pointer, where there appears the figure 8, looking west towards the west terminus of the property?

A. Yes. It is taken from relatively that spot. It was actually back closer to the intersection of this dike, but rather than to superimpose that number and the spot over the other markings, it was placed at this position.

Q. So that, roughly, this is between 3 and 2?

A. That is correct.

Q. And this picture, then, would also include the area of 6, 5, 3 and 9, wouldn't it?

A. Roughly, yes.

\* \* \*

Q. (By Mr. Irwin): I don't want to mislead you in any [107] way and so I will ask the direct question again to save time. What kind of a camera and what kind of lens was used in the taking of these Exhibits 2 to 9?

A. An Eastman kodak, flash-bantam, with an F.45 lens. That is the designation of the camera.

Q. Does that produce the size picture as is represented by Exhibits 2 to 9, without any blowing

(Testimony of Jack E. Bedwell.)

up? A. No, that does not.

Q. How big a negative is produced by the camera that you used in obtaining Exhibits 2 to 9?

A. Slightly larger than 35mm.

Q. Could you tell us what that is?

A. Possibly an inch and three-quarters to an inch and one-quarter. I don't know the exact dimensions of the negative itself.

Q. So that Exhibits 2 to 9, as we see them here, are blown up from a  $1\frac{1}{2}$  to  $1\frac{3}{4}$  inch negative?

A. They are enlarged negatives, yes.

Mr. Irwin: That's all. Thank you, Mr. Bedwell.

\* \* \*

### JOHN MASON SPICER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. Spicer, where do you reside?

A. I reside at Ojai, Ventura County.

Q. What is your occupation?

A. I am a State Game Warden and a Deputy United States Warden.

Q. What are your duties in those regards, generally?

A. Enforcing the laws of California Fish and Game Commission and the migratory laws of the Fish and Wildlife Service.



(Testimony of John Mason Spicer.)

Q. That is as a Deputy Federal Game Warden?

A. Yes.

Q. For what area are you responsible in that capacity?

A. Mostly Ventura County.

Q. Do you have any game wardens working under you?

A. None under me, no. [109]

Q. How long have you been in the service, that is, in this position?

A. Approximately 14 years.

Q. Do you know the defendants in this case?

A. Yes, I do.

Q. Do you know all of them?

A. By sight, yes; not all by name.

Q. Can you point out all of them to us?

A. There are two defendants sitting at the counsel table, and the balance are over on the left in the front two rows.

Q. Do you know where the Santa Clara River Game Preserve is located?

A. Yes, I do.

Q. Is that a private hunting club?

A. Yes, it is.

Q. Directing your attention to the date of October 21, 1949, did you have occasion to call at the Santa Clara hunting club on that particular date?

A. No, I didn't.

Q. What day did the hunting season open?

A. It opened the 21st at noon.

Q. Where were you in the afternoon of the 21st?

A. We were patrolling. I was accompanied by Warden Edgerton. We were patrolling the other two large clubs, as [110] we call them, the Ventura

(Testimony of John Mason Spicer.)

County Club and the Point Magu Game Preserve.

Q. Where were you at 5:30 or 6:00 p.m. that evening?

A. At 5:30 or 6:00 p.m., we were in the vicinity of the Santa Clara river bottom.

Q. What were the circumstances of your being present at that place?

A. Warden Bedwell had contacted us by radio and said that he wished to see us to compare notes on the opening of the hunting season.

Q. Did you meet Warden Bedwell?

A. Yes, we did.

Q. Where did you meet him?

A. At the Mound Water Company.

Q. This was at about what time?

A. Well, I would say approximately between 5:00 and 5:30.

Q. Did you call on the premises of the Santa Clara club after that?

A. We did that evening, yes.

Q. Wasn't that on the 21st of October?

A. Yes. I was confused there. That was the evening of the 21st.

Q. So that on the evening of the 21st of October, you did have occasion to call at the premises of this private hunting [111] club?

A. Yes, we did.

Q. Would you go ahead and tell of your visit to this club? Tell the court and jury what happened.

A. Well, on meeting Warden Bedwell at the Mound Water Company, he informed us that he

(Testimony of John Mason Spicer.)

had seen quite a large quantity of feed on this Santa Clara Game Preserve, so I said I felt that we should check it. So we proceeded to the Santa Clara——

Q. Excuse me for interrupting. Did he say he had seen the feed on the club?

A. Yes, he had told us that, yes.

Q. Go ahead.

A. So we proceeded to the Santa Clara Club. It was approximately 6:00 o'clock that night. We then——

Q. Did you enter the premises of the club?

A. Yes, we did.

Q. And what were the conditions as you found them when you entered the premises of the club?

A. We went down the west bank to the middle dike, spasmodically flashing our light, and at no time while we were flashing our light did we cover the ground without seeing grain on it.

We traveled down the middle dike of the club and discovered grain that, to me, it seemed to me as though it had [112] been poured from a two-pound coffee can. There were piles of it. You could easily reach down and get two handfuls without even touching the ground. As I remember, I stayed in the main dike most of the time. The other wardens branched off on the side dikes.

I did notice the grain in the pickle weed along the edges of the middle dike, and also large piles of grain intermeshed with the pickle weed.

Q. What kind of grain was this?



(Testimony of John Mason Spicer.)

A. It was barley.

Q. Did you pick up any of this grain and examine it?      A. Yes, I did.

Q. Showing you an object marked Government's Exhibit No. 10 in evidence, does the material in that picture representing this object resemble or is it a fair sample of the grain that you saw there on the evening you mentioned and under the circumstances which you have described?

A. Yes, I think it is.

Q. Go ahead. Did you see anything else?

A. No, not at that time.

Q. What then occurred after you had made this tour over the premises of the club?

A. Samples were taken and we departed from the club.

Q. Did you see Mr. Bedwell taking a sample, Warden Bedwell? [113]      A. Yes, I did.

Q. Did you take a sample yourself?

A. Yes, I took some grain.

Q. What happened to yours?

A. I enclosed mine in a manila envelope, and the next morning I turned it over to Mr. Elder.

Q. What then occurred?

A. We left the club, went back to the Mound Water Company, and I departed for Ojai, telling the other two wardens that I would notify my superior immediately.

Q. Who was your superior?

A. Captain Fred Hecker.

Q. Is he now living?      A. He is dead.

(Testimony of John Mason Spicer.)

Q. He was living at that time?

A. Yes, he was.

Q. Go ahead.

A. So I arrived home approximately 8:00 o'clock at Ojai. I immediately called Captain Hecker, who in turn told me to notify Mr. Elder.

Q. Did you notify Mr. Elder?

A. I called Mr. Elder, yes.

Q. Where did you phone him?

A. I phoned his residence at Glendale. I was informed that he was in Bakersfield. I then called Bakersfield and [114] contacted Mr. Elder.

Q. Did you have a conversation with him at that time?      A. I did, yes.

Q. What time of the day was it, approximately?

A. I would say approximately 8:30.

Q. This was on the evening of the 21st of October?      A. Yes.

Q. How did you know it was Elder that you were speaking to?

A. I recognized his voice.

Q. Go ahead. What was said during the conversation?

A. I just informed Mr. Elder that we had taken some samples of grain on the Santa Clara preserve and that there was more, there was a great deal of grain there, and I thought he should investigate it.

Q. Was this in accordance with your instructions from your superiors, that you phoned Mr. Elder?

A. Yes, it was.

Q. What did you then do, if anything?

(Testimony of John Mason Spicer.)

A. Mr. Elder told me that he would meet us in Ventura the next morning; so I called Warden Edgerton and Warden Jack Bedwell and told them to meet me at Ventura at 6:00 o'clock the next morning.

Q. Have you told all the conversation that took place [115] between you and Mr. Elder at the time you phoned him? Did he make any comment at the time you told him about this advice?

A. Mr. Elder had stated that he had planned to check the clubs at Ventura County.

Q. That is, he had planned in the then future?

A. Yes.

Q. Go ahead. You arranged to meet, you said, Wardens Bedwell and Edgerton? A. Yes.

Q. Did you meet them? A. I did, yes.

Q. At what time did you meet them?

A. At approximately 6:00 o'clock in the morning of the 22nd.

Q. Who else was present?

A. Warden R. E. Bedwell from Santa Barbara.

Q. Was Mr. Elder present?

A. Yes, he was.

Q. Did you, after that meeting, visit the premises of the club, the Santa Clara club?

A. Yes. We proceeded to the Santa Clara game preserve.

Q. Will you tell us the circumstances of that visit to the club, or what occurred?

A. We arrived there at approximately 6:30 and stopped [116] our cars at the edge of the Santa



(Testimony of John Mason Spicer.)

Clara River bottom, I would say approximately two-tenths of a mile from the Santa Clara game preserve, where we observed hunters on this particular club shooting ducks.

Q. Could you hear shots?

A. We heard shots.

Q. Did you see ducks in the area?

A. I saw ducks in the air. I saw no ducks on the water. I saw them flying in the air, and I saw several ducks fall.

Q. Excuse me. Do you mind if I interrupt and take you back to the night before? Did you see any ducks when you were inspecting the premises during your nocturnal visit?

A. Yes. We disturbed ducks on the ponds at that time.

Q. You could see ducks? A. Yes.

Q. Were there many of them or a few of them?

A. Well, it seemed as though it was a good many, yes.

Q. I am sorry to have interrupted you, but you left off when I did interrupt you at the point where you were observing hunters on the premises.

A. Yes. I counted approximately 10 or 12 hunters on this particular club. I saw ducks fall.

Q. What did you do then?

A. I proceeded with Mr. Elder down this east road.

Q. Referring to the diagram.

A. Yes, down the east road to the conjunction of the south road dike.

(Testimony of John Mason Spicer.)

Q. What then occurred?

A. We noticed a hunter approaching the east road carrying two ducks, and on coming to this cross section, we identified the hunter as Mr. Carty.

Q. Was there a conversation with Mr. Carty at that time?      A. Yes, there was.

Q. Pardon me?      A. Yes, there was.

Q. Did you have a conversation with him?

A. I just spoke with him. He shook hands with me and we passed the time of day.

Q. Did you hear a conversation in which he took part?      A. Yes, I heard it.

Q. What was said during the conversation?

A. Mr. Elder informed Mr. Carty that he was sorry to see him here, and Mr. Carty asked him why, and Mr. Elder informed him that the club was covered with grain and that all members shooting on the club were in violation, because they were shooting over baited ponds. [118]

Q. What did Mr. Carty say then?

A. Mr. Carty said, "Well, don't arrest me. Arrest the club."

Mr. Elder informed him it was not a matter of arresting the club, it was a matter of citing the individual hunters on that club.

Q. Did Mr. Carty say anything else at that time?

A. I don't remember him saying anything more.

Q. Did he say anything about other clubs?

A. I didn't hear him say anything about any other clubs.

(Testimony of John Mason Spicer.)

Q. Was there any other part of the conversation you can recall now?

A. Not that I can recall.

Q. What did you do then, if anything?

A. I proceeded with Mr. Elder to the opposite side of the club, as we had seen hunters start to leave.

Q. By the opposite side, where do you mean?

A. Well, that would be on the west side of the club.

Q. The north or south?

A. On the south, southwest corner of the club.

Q. Where did Mr. Carty go, if you know, during this time?

A. Well, he went over to recover a duck, I believe, in an adjacent field. [119]

Q. And you and Mr. Elder, did you drive over to the southwest corner?

A. Yes, we did.

Q. What occurred after you got there?

A. Well, there were two hunters coming out in a car, and we pulled alongside them and stopped, and the two hunters got out and we started to talk to them.

Q. Who were they, do you know?

A. The two hunters being Mr. Maxwell and Mr. Doud.

Q. Which Doud, do you know? Which Mr. Doud?

A. Let's see. Mr. Jim Doud, I believe, James Doud.



(Testimony of John Mason Spicer.)

Q. James Doud. What then occurred, if anything?

A. Mr. Elder also informed them that he would have to take their names as they had been shooting over baited ponds. He asked Mr. Maxwell if he had seen the grain coming in, and Mr. Maxwell said no, that he hadn't seen any grain.

Mr. Elder asked if he was familiar with the regulations as to feeding or scattering grain on the club.

Mr. Maxwell said yes, he was, that he had dozens of Fish and Wildlife pamphlets in his office.

Their names were taken and their ducks were deposited in Mr. Elder's car.

Q. Was there anything else said in this conversation that you can recall?

A. I think at the time that Mr. Maxwell said that he [120] hadn't seen any grain coming in, Mr. Elder said, "Well, I could pick up a couple of bucketsful right here," pointing down to the ground right in front of the car.

Q. Was there grain there?

A. Yes, there was. There was some grain and lima beans.

Q. Was there anything else said in that conversation that you can recall?

A. Not that I can recall right now, no.

Q. Was anything said by Mr. Maxwell about when material had been placed on the pond?

A. I can't recall him saying that.

(Testimony of John Mason Spicer.)

Q. Was anything said by him about what kind of material had been placed on the ponds?

A. Not at that time. I can't recall him saying that.

Q. What then occurred?

A. Well, after talking to the first two hunters, we proceeded out on the south road dike and met, I think, four other hunters coming in with their birds.

Q. Are any of them defendants in this case?

A. Yes.

Q. Who are they?

A. Mr. Maulhardt and Mr. Doud.

Q. What occurred at that time? [121]

A. Mr. Elder also informed them of the same situation and took their names, checked their licenses and their duck stamps, and asked them to leave their ducks on the dike.

Q. Did he tell them to throw them down themselves in some particular spot?

A. Yes. Our car was near us and they were putting their ducks in front of the car.

Q. Near what cross dike was that, if you recall?

A. Well, it was either the second or third. I believe it was the third.

Q. Showing you Government's Exhibit No. 8 in evidence, is that the car to which you referred, and the place where it was parked?

A. That is Mr. Elder's car, yes.

Q. You say it was parked. Is that the place where it was parked at the time you refer to?

(Testimony of John Mason Spicer.)

A. Yes.

Q. Are you able to tell from that picture where they had thrown down their ducks at Mr. Elder's request?

A. Well, it was right up in front of the car here and at this cross dike.

Q. That would be cross dike No. 2?

A. Yes, that would be it, yes.

Q. What were the names of those first two hunters Mr. Elder advised? [122]

A. Mr. Maxwell and Mr. Doud.

Q. Had they put down their ducks, too, at Mr. Elder's request?

A. Yes. We had put the ducks in the car because we met them further off the club.

Q. Then you drove up to the point where it was parked?

A. Yes.

Q. Had Mr. Elder issued any slips to them of any kind?

A. I believe he had, yes.

Q. What occurred after you met these other hunters, if anything?

A. He didn't issue any citations to them, no. He took their names and addresses.

Q. What occurred after you met these other hunters?

A. Their names and addresses were taken, and when they left their ducks, they proceeded down the south road dike.

Q. What did you do then?

A. Just about that time, after these hunters had left, the other wardens had come over from the



(Testimony of John Mason Spicer.)

east road, had walked through the club and come over from the east road.

Q. Did you conduct an inspection of the premises on this occasion? [123]

A. After the wardens had come over from the east road, I walked down dikes 2 and 3, checking for grain and checking the blinds.

Q. What did you find?

A. I found grain intermixed in the pickle weed along these dikes.

Q. Could you more exactly describe where you found it?

A. Well, it would be on dikes 3 and 4, in front of the cars.

\* \* \*

Q. (By Mr. Johnson): Go ahead.

A. It would be on dikes 3 and 4.

Q. What kind of grain was it that you found?

A. Barley.

Q. Did you find anything else besides barley?

A. There was lima beans spread on the south road dike.

Q. Did you examine any of the cross dikes?

A. Yes. Three and four would be the cross dikes that I examined.

Q. What did you find there?

A. I found barley in with the pickle weeds.

Q. What occurred after that, after you joined the [124] other wardens?

A. That is when I worked some of the cross dikes.

(Testimony of John Mason Spicer.)

Q. After you had worked the cross dikes, what did you do?

A. We went back to the point where the ducks were on the south road, and Mr. Bedwell proceeded to take pictures of the grain and beans.

Q. I am showing you Government's Exhibit No. 2 in evidence. As you can best recollect, does that portray the scene photographed by Mr. Bedwell on the occasion to which you have referred?

A. Yes, it does.

Q. And does that represent the conditions as you saw them at that time? A. It does.

Q. Showing you Government's Exhibit No. 3, which is a photograph, in evidence, does that represent a scene photographed by Mr. Bedwell at the time and under the circumstances to which you referred? A. Yes, it does.

Q. Does that portray the conditions of the area as you saw them at that time?

A. Yes, it does. [125]

\* \* \*

Q. (By Mr. Johnson): Showing you Government's Exhibit Nos. 4 through 9, I will ask you to examine them and tell the court and jury whether these portray scenes which, to the best of your knowledge and recollection, were photographed at the time you have mentioned by Mr. Bedwell, and also whether they depict the conditions of the premises as you saw them and have described them at that time. Take your time.

A. Yes, they all do.

(Testimony of John Mason Spicer.)

Q. You are pictured in one of these photographs as a matter of fact, aren't you?

A. Yes, I am.

Q. Let's check to see which one it is. You are in Exhibit No. 3? A. Yes.

Q. On the extreme right. Was this taken at the point where the birds had been put down by the hunters as they came off?

A. Yes, in the approximate location.

Q. I notice the birds in the picture.

A. Yes.

Q. You said you encountered two hunters as you came into the premises, and as you walked out you saw some others, I think four altogether. Did you see any other hunters coming off the premises [126] of the club?

A. I saw hunters leaving on the east side of the club.

Q. How many were there?

A. I would say four, five, or six, approximately.

Q. Did you see any other hunters?

A. No.

Q. Did you see Mr. Elder encounter any other hunters?

A. Not that I remember, no.

Q. Were you with Elder at all times, or were you separated from him?

A. No, I was not with him all the time. I crossed the cross dikes, checking the dikes for grain.

Q. And you did find barley there, as you have stated? A. Yes, I did.



(Testimony of John Mason Spicer.)

Q. Where did you find the lima beans, again?

A. On the south road dike.

Q. Will you describe the area where the lima beans were? Describe how they were placed.

A. Well, about the best way to say is it just looked like that it had been paved with lima beans. I would say that the width would run from, oh, eight or nine feet to 12 or 15 feet wide.

Q. Did you take any samples at that time?

A. No, I did not. [127]

Q. Did you see anyone else take any samples?

A. I saw Mr. Elder taking samples.

Q. How many did he take that you saw?

A. Two. He took one sample of the beans and one sample of the barley.

Q. Do you recall the receptacles in which he placed them, if he did put them in receptacles?

A. The beans were taken in a cup, as I remember, and the barley was deposited in a milk container.

Q. Did you have any other conversations with hunters, other than what you have already stated?

A. Not that I remember, no, sir.

Q. Did you notice any grain or lima beans, or any material of that sort, in the water, the pond?

A. In one pond, I noticed barley strewn from the dry ground down into the pond, as though someone had walked with a sack with a hole in it.

Q. Would that be as shown in this particular scene, Government's Exhibit No. 4?

A. Yes, that is it.

(Testimony of John Mason Spicer.)

Q. That is the particular area to which you refer?  
A. Yes.

Q. That was what kind of grain, again?

A. That was barley.

Q. Were there any lima beans in that [128] particular area?

A. Not that I remember.

Q. In other words, that was just barley?

A. Yes, sir.

Q. What did you do then after you took the pictures? Did you call again at these premises? Well, strike that. Did you leave the premises at that time?

A. Yes, we left the premises.

Q. And did you call again at these premises on that day?  
A. No, I did not. [129]

\* \* \*

Q. (By Mr. Johnson): Mr. Spicer, you said you have been a game warden for 14 years?

A. Yes, approximately.

Q. You are familiar, then, with the habits of various game animals and birds, including migratory waterfowl?  
A. Yes, to some extent.

Q. Are you familiar with their eating habits?

A. To some extent, yes.

Q. In your opinion, would ducks be likely to be enticed or attracted by lima beans?

A. Yes, I think so. In traveling through the country, I have had ranchers tell me of ducks landing in their bean fields.

(Testimony of John Mason Spicer.)

Q. Under what conditions might they eat lima beans or might not eat lima beans? Will you go further into that?

A. I think in an area where beans are prevalent, they have a tendency to feed on the beans, or grain, or whatever is abundant in the area.

Q. How about geese, would they eat lima beans?

A. I think they would, yes.

Q. On what do you base that thought?

A. On the fact that geese have been reported to feed in lima bean fields where no other grain has been growing. [130]

Q. Are there a lot of lima beans grown up around Oxnard?

\* \* \*

### Cross-Examination

By Mr. Irwin:

Q. Mr. Spicer, I believe you stated that it was on the evening of the 21st, which was the day the season opened, that you went on the premises of the Santa Clara Game Preserve.

A. Yes, that is correct.

Q. How long prior to that time had you been on the Santa Clara Game Preserve?

A. I don't remember exactly. It might be some time.

Q. Would you say within the week?

A. Not that I remember, no.

Q. Do you keep a record of where you go and what you cover on your patrols?



(Testimony of John Mason Spicer.)

A. Yes, I do.

Q. Do you have that record with you?

A. No, I don't.

Q. You presently haven't any independent recollection as to whether or not you were on the Santa Clara Game Preserve within a week prior to October 21st?

A. No, I haven't. I did not see any occasion to. [131]

Q. You wouldn't say that you were not?

A. I don't remember being on it, no.

Q. Now, do I understand that your duty is that of warden for Ventura County?

A. I am a state warden assigned to Ventura County, yes.

Q. Some of these defendants you have known for a considerable period of time?

A. I did not hear the first part of that question.

Q. Some of the defendants you have known for a considerable period of time?

A. Yes, I have known them—not personally.

Q. Do you know a state game warden by the name of Getman? A. Carlos Getman, yes.

Q. It is a fact, is it not, on the 15th of October, six days before the season opened, he advised you that Mr. James McCormick had requested that you game wardens please come down and check over their preserve and see if it was in good order before the season opened?

A. I don't remember that conversation. I saw no reason to do it. They were warned the year

(Testimony of John Mason Spicer.)

before, and I saw no reason to go back and check their club.

Mr. Irwin: May I have my question read again?

(The question was read by the reporter.)

Mr. Irwin: And now the first part of the answer.

(The answer was read in part, as follows:

“A. I don’t remember that conversation.”)

Mr. Irwin: I now move that the balance, after “I don’t remember that conversation” be stricken.

The Court: It may go out.

Q. (By Mr. Irwin): One of the principal duties of the game warden, one such as yourself, Mr. Spicer, is the conservation of wild life, is that not true? A. That is true, yes.

Q. And you are to prevent violations whenever possible, isn’t that so? A. Yes, we are.

Q. I believe you stated after you entered the preserve in response to Mr. Bedwell’s statement that he had seen quite a lot of feed on the Santa Clara Game Preserve, after you had gone over there, you had then called Bud Elder and reached him at Bakersfield? A. Yes.

Q. As a matter of fact, you talked to Mr. Elder prior to this about the fact that you were going to raid the Santa Clara Game Preserve, did you not?

A. I don’t remember.

Q. You don’t remember?

A. No, I don’t remember speaking to him. [133]

Q. You wouldn’t say you hadn’t?

A. Yes, I would say I hadn’t.

(Testimony of John Mason Spicer.)

Q. And that you had had no conversation, either in person, by phone, or written communication with Mr. Elder about the Santa Clara Game Preserve within two weeks prior to the opening of the season?

A. I don't remember any conversation, any such conversation.

Q. When you reached Mr. Elder by phone, he was at the home of Les Arnold, was he not?

A. He was at the home of Warden Arnold, yes.

Q. He is also a state game warden?

A. Yes.

Q. Do you know a man by the name of Jack White? A. Yes.

Q. What is he, officially?

A. He is Ventura County game warden. He is employed by the county.

Q. He operates for the County of Ventura in the same jurisdiction you operate for the state?

A. That's right.

Q. Is it not a fact that within two years last past you were active in attempting to have the office of county game warden abolished? [134]

\* \* \*

The Witness: It is not a fact.

Q. (By Mr. Irwin): You know, do you not, that there was presented to the County Grand Jury of Ventura for their recommendation to the Board of Supervisors, a recommendation that that office be abolished?

A. I had seen a copy in the paper, or an article



(Testimony of John Mason Spicer.)

in the paper giving all the grand jury's recommendations in Ventura County.

Q. You know, do you not, that Mr. Maxwell was attorney for the group that led the fight to retain the county game warden?

A. I did not know that.

Q. It is your testimony that you took no interest in that grand jury matter looking towards the abolition of that [135] office?

A. That is right.

Q. Going back to the evening of October 21, after you met Mr. Bedwell, how did you go to the club, by auto, or did you walk from this auto tower?

A. We drove from the Mound Water Company.

Q. Let's get these pictures again. I think it is always better to use pictures. I am directing your attention to Government's Exhibit 1. Will you please tell us where you came on and how you approached the Santa Clara Game Preserve, looking at Exhibit 1? This is the evening of October 21.

A. We approached from the north across the Santa Clara river bottom here, approached from the north and drove up the north road, drove up opposite the north dike on the road that was alongside the fence of the Santa Clara Game Preserve.

Q. Where did you come on to it?

A. On to the west end of the club. We parked our car at the——

Q. I believe you stated you walked down dikes 2 and 3 also?

A. No, I didn't. I said that I walked down and checked dikes 2 and 3 the next day.

(Testimony of John Mason Spicer.)

Q. I beg your pardon. What did you do that evening? [136]

A. I walked down the middle dike, as it is called, on the board.

Q. How far did you walk?

A. I walked approximately down to the east end of the club on the main dike.

Q. On that evening, you did not walk across the dike?

A. I walked out on the dike adjacent to the middle dike road.

Q. How far either way?

A. Oh, 15 or 20 feet.

Q. The next day I take it you did not make any inspection of the place before the shooting started, because it was dark, wasn't it, until just about when the shooting commenced?

A. You mean the next morning?

Q. Yes, the 22nd.           A. That is right.

Q. The inspection you made was after the events you have described, and the hunters were all gone?

A. Yes.

Q. When you walked over the dikes on that occasion, what group did you traverse?

A. Well, I accompanied Agent Elder up this south road dike and checked the dike where the beans were spread, [137] and also went in on the cross dikes.

Q. How far in did you go?

A. Well, I believe I went right across the middle dike and checked the cross dikes, oh, 2, 3 and 4.

(Testimony of John Mason Spicer.)

A. No. We were all in a group. I had told him before, the evening before, the condition of the club, so there wasn't any point in going over it in the meantime, because we were proceeding down to the club, anyway.

Q. When you told him over the phone the night before, did he say anything to indicate he knew about it, or was it all news to him?

A. He didn't indicate one way or the other. He said he had planned on checking the clubs in Ventura County. Whether [140] he meant the immediate future or not, I don't know. I told him the condition of the club, and he said he would come down on that morning.

Q. But it is your contention that when he met Mr. Carty, and Mr. Carty asked him what the situation was, Mr. Elder said, "Shooting over baited grounds"? A. Yes.

Q. In any event, up to the time, from 6:00 o'clock in the morning up to the time you approached Mr. Carty, neither Mr. Elder nor yourself had been on the Santa Clara Game Preserve?

A. I don't know whether Mr. Elder had been on it. I had been on it.

Q. From the time he met you at 6:00 o'clock, certainly he was not on the preserve because you were together, weren't you?

A. We had breakfast together, yes.

Q. Did you stay together from that time until the time you met Mr. Carty?

A. We weren't together down here.



(Testimony of John Mason Spicer.)

Q. Where was he then?

A. He was in the approximate area, but I was not right beside him all the time.

Q. How far away were you?

A. Well, 15, 20, 30 feet, maybe. [141]

Q. If you were off the preserve and he was within 15 or 20 feet of you from the time you met him that morning and had breakfast up to the time he approached Mr. Carty, to your knowledge had he been on the premises?

A. To my knowledge, no.

\* \* \*

Q. (By Mr. Irwin): I am showing you now Government's Exhibit 8. There are two autos on here. I believe your testimony is those autos are parked approximately opposite dike No. 2, is that correct? A. Approximately, yes, I believe.

Q. Looking at Exhibit 1, will you please tell us where the dike No. 2 is?

A. I would say it would be there (indicating).

Q. So that is where his automobile was, these two cars that are in this picture? A. Yes.

Q. All the pictures which have been introduced here, Nos. 2 to 9, do you subscribe to Mr. Bedwell's testimony as to where he has affixed them on Exhibit 1? [142]

A. I was not with him all the time he was taking the pictures. I was wandering up the dikes, checking the dikes.

Q. As to the place where you appear in the

(Testimony of John Mason Spicer.)

picture, Exhibit No. 3, in any event you are there, aren't you?      A. Yes.

Q. And Exhibit No. 3, Mr. Bedwell, on Government's Exhibit No. 1 has placed that as being opposite dike No. 2?      A. Yes.

Q. Is that your best recollection as to where that picture was taken?      A. I think so, yes.

Q. When you gave the conversation had between Mr. Maxwell and yourself, did you give the entire conversation, as you can presently recollect it?

A. I didn't have any conversation with Mr. Maxwell.

Q. Or when you overheard a conversation between Mr. Maxwell and Mr. Elder, did you give the substance of it in its entirety as you now recollect?

A. I can remember him mentioning to Agent Elder that he was an officer of the club, I believe he said he was secretary-treasurer of the club, and that he had ordered or had some grain put out 10 days previous to the hunting season.

Q. Now, I believe you stated that the day the season opened, you were around inspecting the other clubs as well? [143]      A. Yes, that is right.

Q. It has been customary, has it not, for all clubs to put out feed some time prior to the opening of the season?      A. Some time prior, yes. [144]

\* \* \*

(Testimony of John Mason Spicer.)

Redirect Examination

By Mr. Johnson:

Q. Mr. Spicer, referring to the conversation with Warden Carlos Getman brought out on cross-examination, what did Mr. Getman say to you on that occasion?

A. I don't remember any particular conversation.

Q. But you have talked to him?

A. I was ordered to the Los Angeles office about that date and it might have slipped my mind. I was ordered there for extra duty.

Q. Referring to the morning of October 21, 1949, which was the date of the opening of the season, did you have occasion at that time to have a conversation with this County Game Warden, Jack White, to whom counsel has referred?

A. Yes, I did.

Q. Could you tell us that conversation?

A. Approximately 9:00 o'clock in the morning, the County Game Warden called and asked if we were going to work the clubs.

I said that we had planned to and that Warden Edgerton and I would probably work the large clubs, as we call them, the Ventura Game Preserve and the Point Magu Game Preserve.

Q. This was, of course, before Warden Bedwell had [145] told you of the apparent violation at the Santa Clara club?

A. That is right, yes.

Q. Go ahead.



(Testimony of John Mason Spicer.)

A. He said that he had checked all the clubs and there wasn't any grain on any of them.

Q. He said all the clubs?

A. He had checked all the clubs and he didn't see any reason why they couldn't go ahead and shoot.

Q. When you did find out that evening, after your inspection of the premises on the night of the 21st, that there was an apparent violation of the baiting regulation, why didn't you notify the Santa Clara Club or its members of that fact, that they were violating the law?

A. I didn't see any necessity to.

\* \* \*

Q. (By Mr. Johnson): The hunting season did open that [146] day at noon, didn't it?

A. Yes, it did.

\* \* \*

### ALVIN W. ELDER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

\* \* \*

### Direct Examination

By Mr. Johnson:

Q. Mr. Elder, where do you reside?

A. Glendale, California.

Q. What is your occupation?

(Testimony of Alvin W. Elder.)

A. United States Game Management Agent.

Q. For what area?

A. Southern California.

Q. What are your duties, generally, in that respect?

A. Generally, my duties are the enforcement of the Migratory Bird Treaty Act regulations and the Lacey Act, and several other federal laws that are not involved in this case.

Q. How long have you been in the federal service, Mr. [147] Elder?

A. Since December 3, 1936.

Q. That is when you came with them?

A. That is when I came with them.

Q. Have you been with them ever since?

A. With the exception of a year in the Army.

Q. Referring to the area of Oxnard, California, do you know or are you aware of the existence of a shooting club or hunting club known as the Santa Clara Game Preserve?

A. I do.

Q. Did you have occasion to call at that club on either October 21 or October 22, 1949?

A. On October 22.

Q. On how many occasions did you call there on that day?

A. At least three times.

Q. When was the first time?

A. At approximately 1:00 a.m.

Q. On the date of October 22nd?

A. October 22nd.

Q. What caused you to call at the club at that time?

(Testimony of Alvin W. Elder.)

A. I had been reached by phone call from Warden Spicer while I was in Bakersfield the night before, advising me that——

Q. Did you have a telephone conversation with him at [148] that time, then?      A. I did.

Q. Tell us what that conversation was.

A. Warden Spicer, at approximately 8:30 p.m., when the call came in, told me that the Santa Clara Game Preserve was baited with barley, and that he had called his captain, Captain Hecker, and Captain Hecker had advised him to get in touch with me.

Q. What did you say to him?

A. I told him that I had intended to check all the clubs of the Ventura County-Oxnard area shortly and that—at first, I tried to talk him out of it, because we had made plans for work the next day.

Q. Who tried to?

A. I had planned to work with Warden Arnold on the 22nd of October.

Q. Were you at Warden Arnold's home?

A. I was at Warden Arnold's home, and I had wanted to come over later, but the urgency of the matter caused me to change my plans, and I went over that night.

Q. What did you do then, after you got the phone call?      A. After I got the phone call?

Q. Yes, after you finished the conversation.

A. I finished eating dinner and left. [149]

Q. Was this at Arnold's house?

A. At Arnold's house.



(Testimony of Alvin W. Elder.)

Q. Go ahead.

A. It was late. We had been working on the opening day of the duck season, and it was shortly before 10:00 that I left Bakersfield, and arrived in the vicinity of the Santa Clara River Game Preserve at the Mound Water Company shortly before 1:00 o'clock. I did not take the exact time at that time. The gate was locked and, not having a key, I had to leave my car there and walk over to the Santa Clara River Game Preserve.

Q. Did you enter upon the premises of the Santa Clara Club?      A. I did.

Q. Would you tell us what happened after that?

A. I walked in along the east road to the approximate center. I had been there before, so I knew my way around.

Q. Can you refer to this diagram and tell us approximately where you mean?

A. The junction of the east road and that middle dike.

Q. You were on foot?      A. I was on foot.

Q. What did you do then, if anything?

A. I walked west on the middle dike to No. 5 cross [150] dike. I then walked clear across that to the south road dike.

Q. Down here?      A. Yes.

Q. And then where?

A. And then west again on the south road dike to cross dike No. 4, and then clear across that to the north road dike.

Q. Like that?      A. That is it.

(Testimony of Alvin W. Elder.)

Q. Then where did you go?

A. As near as I can recall, that is about the directions that I traveled. Then I went west again to the next one, No. 3 cross road dike, back to the center dike, and I either turned east or west from there. Anyway, I was trying to cover as much of the area as I could on foot.

Q. And what did you do then?

A. Then I went on around in. I must have turned west, because I come down the next dike.

Q. This one?

A. No. I went back to the east then, to the north, back to the north dike.

Q. Then where did you go?

A. I circled that pond, going west from there and down to the center again, and then on out. [151]

Q. Then where did you go?

A. I went back to my car.

Q. Will you describe the condition of the area which you traversed on the premises of the Santa Clara Club?

A. Practically every foot of the way after I passed cross dike No. 5 on the middle dike——

Q. After you got to here?

A. Yes. There was grain broadcast or scattered quite widely on the center.

Q. Here?

A. Barley, yes, and along the cross dike, it was in very heavy dribbles where it appeared to me a sack had been carried over someone's shoulder, allowing barley to leak out where it was carried, with

(Testimony of Alvin W. Elder.)

here and there a little pile or so, approximately—I estimated at the time five or 10 pounds in each pile, but that is only an estimate.

At one place during the evening I found grain in the water. It looked like more than two sacks had been dumped in one place.

Q. Where was this place?

A. That was on the south dike near No. 4.

Q. Right in this area?

A. I am pretty sure that is where it was. Being night, I lost track, more or less, of which road dike I was on, but, to the best of my recollection, it was near No. 4 [152] cross dike and the south dike.

Q. Did you see anything else then at that time?

A. No, I didn't. I didn't get as far up as where the lima beans were. I found those at 7:00 something the next morning.

Q. Was there anyone else at the premises at that time?

A. No, I didn't see anyone else, or I didn't see any car, likewise, in the vicinity.

Q. Was there any wildlife present?

A. There were ducks feeding when I arrived, but I would say it was a relatively small number. I could hear them, but I couldn't see them.

Q. How can you tell? What sound makes you think they were ducks?

A. It is an unmistakeable sound to anyone who has listened to ducks. There is a whistling noise and the beating of wings. It is more the beat of



(Testimony of Alvin W. Elder.)

wings that I heard, more than anything else, and the splashes in the water.

Q. You have listened to a lot of ducks in your time?      A. Yes.

Q. What did you do after you left the premises?

A. I returned to my car.

Q. When was the next occasion that you called on the premises of this club? [153]

A. Approximately 7:15 or 7:20 the next morning, or the same date.

Q. Did you have a flashlight when you made your nocturnal visit?

A. I did. I had a flashlight.

Q. The next morning at about 7:00 or 7:30, you say you visited again?      A. Approximately.

Q. That was on October 22nd?

A. The same day.

Q. Will you tell us what occurred on that occasion? First, tell us who was present there.

A. At 6:00 o'clock in the morning, I had met Wardens Jack and Ernest Bedwell, John Spicer, and Les Edgerton, at the Blair Cafe in Ventura, where we had breakfast, and then we drove to the Mound Water Company, and one of the other boys had a key by this time, and we got through the gate and went on over to approximately an eighth of a mile, or maybe a little more, from the northeast corner of the club, where we waited in a clump of willows to determine whether anyone was hunting or not.

(Testimony of Alvin W. Elder.)

Q. I think you testified previously in the first part of your testimony that you had asked Mr. Spicer to get some other game wardens and meet you. Did you testify to that? [154]

A. No, I did not.

Q. I am sorry. Did you do that?

A. I suggested over the phone, yes, I said, "Get some others, get some of the other boys."

Q. What do you mean by "the other boys"?

A. I meant two or three other wardens.

Q. Was there some reason for your wanting to have two or three others besides Spicer and yourself?

A. I gathered from past experience we might run into influenial parties that would attempt to cause difficulties.

Mr. Irwin: Just a moment, Your Honor, I move to strike that out as highly improper.

The Court: It may go out.

Q. (By Mr. Johnson): But you did have four others with you? A. That is right.

Q. At 7:00 or 7:30, you proceeded to this area which you described near the northeast corner. Will you tell us what then occurred, if anything?

A. All of us watched with field glasses or binoculars the operations of the club, and it was just shortly after we got out of our cars that I observed a man, his head and shoulders, appear above a blind and a gun come out, and shoot at ducks flying over. During the court of the watching, I observed at least three ducks fall to various hunters. [155]

(Testimony of Alvin W. Elder.)

Q. What did you do then?

A. Well, after a short while, a few hunters appeared to be picking up their ducks, so we decided it was time to go on in. It was agreed I was to drive in with Warden Spicer and go clear around to the far side by the farm buildings and come in from that way, and the other three wardens were to wait there for a signal to come on in and to cover the east end of the club.

Q. What did you do then, after you decided this? Did you go on down to the premises with Warden Spicer?

A. Warden Spicer left with me in my car, and we drove south on east road, and we observed a hunter coming towards the road on the south dike.

Q. That is along here?

A. That is along there. We drove up to the fence at that point, and we both got out of the car, and the defendant Carty appeared carrying a shot gun and a couple of ducks in his hand.

Q. Do you know the defendant Carty?

A. I am acquainted with the defendant Carty.

Q. Would you point him out to the court and jury, where he is?

A. I didn't get the question.

Q. Would you point out to the court and jury where he is? [156]

A. Yes.

Mr. Irwin: We stipulate it is Mr. Carty.

Q. (By Mr. Johnson): Go ahead. What then occurred?

A. Well, we were both standing at the gate wait-



(Testimony of Alvin W. Elder.)

ing as he walked up to us. He stopped, shook hands with Warden Spicer, and greeted me.

And I said, "I am sorry that you are here, Mr. Carty. I was hoping you would not be present."

He said, "Why"?

I told him that the ponds were too heavily baited with grain and that under the circumstances of last year, where he had been warned, that I couldn't overlook this this time, and asked him, also, if under those same circumstances, if they hadn't been expecting me. He stated that he had.

Q. Did you tell him that you had made an inspection?

A. I told him that I had inspected the ponds.

Q. What time did you tell him you inspected them?

A. I told him at 1:00 o'clock in the morning.

Q. Was there anything else said during that conversation?

A. Yes. The conversation took quite a while.

Q. Tell us what else you recollect.

A. Almost the first thing he told me was that they had an Attorney-General's decision as to the legal time up to which they could feed birds, feed ducks. [157]

Q. Did he say what that was?

A. He said it was up to—it was his understanding they could feed to within 72 hours of the shooting.

Q. Was he referring to the State Attorney-General?  
A. I assumed he must have been.

(Testimony of Alvin W. Elder.)

Q. Go ahead. What else occurred during that conversation? What else was said?

A. I explained to him after that that it was not a matter of the length of time that the feed had been put out before the ducks were hunted, it was the fact that the grain was there at the time the hunting took place that made the violation so important.

Q. Was anything else said by Mr. Carty?

A. Yes, quite a bit.

Q. What was that?

A. At one point, I started to write his name on a violation slip. He told me to arrest the club, not him, that he hadn't violated any law.

Q. Was anything else said that you can recall?

A. Not right this minute. I am sure there was more conversation, though.

Q. Pardon?

A. I am sure there was more conversation.

Q. But you can't recall it all right now?

A. No. [158]

Q. Was there anything said about whether a test case would be made or not?

A. Yes. Mr. Carty did make that statement.

Q. Go ahead and tell what statement he made.

A. Mr. Carty said that if we wanted to be technical, all of the gun clubs in the vicinity could be arrested, they all had been feeding prior to the season, and that he thought now was the time to make a test case out of this matter.

Q. What did you reply, if anything?

(Testimony of Alvin W. Elder.)

A. I advised him there had been numerous cases made and that I saw no reason for a test case. However, I informed him that was his right and privilege.

Q. Did you say anything else that you can recall?  
A. No.

Q. Pardon?

A. I can't recall anything else. [159]

\* \* \*

Q. What then happened after this conversation?

A. Spicer and I both got back into my car, and we drove south to Gonzales Road, then west to the entrance, to the entrance of the farm, and then down to the gate where the club grounds—yes, approximately in that position.

Q. What occurred then, if anything?

A. We stopped my car and got out to observe the activities of the hunters with field glasses. In a moment, two hunters left the blinds and started toward us, one coming clear on in to where I was, to get and automobile to go back and pick up the ducks and the other hunter.

Q. Who was that one?

A. That was James Doud.

Q. Did you have a conversation with him at that time?  
A. No. [160]

Q. What then occurred, if anything?

A. He returned, picked up the other hunter and the ducks, and returned out into the club grounds.

Q. Who was the other hunter?



(Testimony of Alvin W. Elder.)

A. The other hunter was Mr. Maxwell.

Q. That was Mr. Maxwell? A. Yes.

Q. What occurred then? Did you have a conversation with them at that time?

A. Not until they returned to me.

Q. That is what I mean, when they returned to you.

A. When they returned to me, I stopped them and introduced myself and told them that the club was heavily baited with grain, and that they were in violation. I asked to see their hunting licenses and duck stamps, which were produced. I wrote the information needed on my pink violation slips.

Q. Had you written out a pink violation slip for Mr. Carty previously?

A. I had started it and hadn't finished it.

Q. You say you wrote out a pink violation slip on Mr. Doud and Mr. Maxwell?

A. That's right.

Q. Did they have any ducks with them?

A. They brought in 10 ducks and one cackling goose between [161] the two of them.

Q. One cackling goose?

A. One cackling goose.

Q. What then occurred?

A. Mr. Maxwell said that he smelled something rotten in the whole deal.

I asked him what it was. Mr. looked at Mr. Doud and said, "Jack White."

Q. And then what?

A. I explained to him Jack White hadn't any-

(Testimony of Alvin W. Elder.)

thing to do with the matter, that this was a routine inspection of the ponds, and that I had found the grain there, that I had been on the ponds during the night and had found much more grain than should have been there.

He stated that he had put out grain shortly before, but it was cleaned up. He said, "I just came in from my blind. I have not seen a bit of grain."

I said, "Mr. Maxwell, when I walked through these ponds early this morning, I could have scooped three or four or more bucketsful of samples from places where I wouldn't have to get out and scratch for the grain, the grain was in heaps and piles."

He said, "That couldn't have been, because they had stopped feeding at least 10 days before."

I offered him a copy of the federal regulations.

Q. What federal regulations?

A. The Migratory Bird Treaty Act regulations. He stated he had several copies of those in the office and waved it to one side. [163]

\* \* \*

Q. Mr. Elder, this morning you were relating the details of a conversation between yourself and Mr. Maxwell at the time you encountered him on the premises of the Santa Clara Hunting Club. Would you tell us further what was said during that conversation?

A. Well, that about covered it. There was one remark made, I believe, by Mr. Maxwell—Mr. Doud didn't have very much to say—about a test case being made of the matter.

(Testimony of Alvin W. Elder.)

Q. What did you say in answer to that, if anything? [164]

A. I don't recall answering that statement. I don't recall that.

Q. Did you take any birds from Mr. Maxwell and Mr. Doud?

A. I took five ducks from each and one cackling goose.

Q. That's right. How did you know they were ducks? That may be a silly question. They were, from your experience, ducks?

A. These were ducks.

Q. What kind were they?

A. They were pintail ducks, widgeon, and one redheaded duck.

Q. Did you make out violation slips on those?

A. I made out pink violation slips on the two of them and advised them at the time I made those slips out that further shooting on this property would result in a separate charge.

Q. What did you do, if anything, after writing out the violation slips on Messrs. Maxwell and Doud?

A. After that was done, I put their ducks in my car and drove farther out onto the south road dike.

Q. How far out did you drive?

A. Approximately where the curved portion joins the main dike at cross dike No. 2.

Q. What did you do then, if anything? [165]

A. Well, we had to—incidentally, I had forgotten to give my signal to the other boys to close in,



(Testimony of Alvin W. Elder.)

but after driving out to dike No. 2 and parking the car, we stayed there a moment or two, watching, while hunters started towards us.

Q. Started what?

A. Hunters started towards us.

Q. Hunters came towards you and Mr. Spicer?

A. Yes, Warden Spicer and I.

Q. Go ahead.

A. We were waiting in front of my car just east of cross dike No. 2, and men were coming in in ones and twos from their various blinds.

Q. Did you talk to them when they came in?

A. I talked to them when they met us, and in the meanwhile Mr. Carty had gone to the hunters on the extreme east end of the club and was walking out with them towards the east road.

Q. Could you observe all this?

A. I could, yes.

Q. Did you observe Mr. Carty going in the direction which you have described?      A. Yes.

Q. What further did you observe in that regard, if anything?

A. Well, I observed Mr. Carty and the hunters going to the east road on down the middle dike.

Q. Anything else?

A. They were carrying their birds and their shotguns.

Q. Did you see any other persons in that area?

A. At about the time that they were leaving, Wardens Jack and Ernest Bedwell and Les Edgerton had driven up to the middle dike at the east

(Testimony of Alvin W. Elder.)

road. Having failed to signal them, they were a little disconcerted when they saw the hunters leaving by that way. There was a car parked on the east road.

Q. Had you seen Warden Edgerton before that after you left the clump of willows?

A. No, I didn't see him until he joined us while I was talking to these other hunters that were coming in. I started to say these hunters were coming in in ones and twos from the blinds towards my car, and we met them at about the intersection of cross dike No. 3 and the middle dike.

As they arrived, I checked their hunting licenses and the duck stamp and wrote the information I needed on violation slips, and told them to leave their ducks, that the ducks were being confiscated as evidence.

I informed them, as I had Mr. Carty and Mr. Maxwell and Mr. James Doud, that further shooting would result in separate charges, that the ponds were very heavily baited with grain. In fact, they were standing in grain that was abnormally thick at the time that I pointed that out to them, and there was very little discussion at the time, as I recall it, [167] with these five men.

I explained the regulations to them, and most of them took it in good part and left, going to their cars, walking down the back—up, I should say, the south road dike towards the farm buildings where their cars were parked.

(Testimony of Alvin W. Elder.)

Q. Were there any guns evident?

A. Each man was carrying a shotgun.

Q. And the ducks they had, what happened to them, if they had any?

A. They were left at the point where we met them.

Q. In what state were they left?

A. As they took them from their hunting coats.

Q. What did you do then with the ducks?

A. We carried them back a short distance toward my car. While talking to these men, Warden Edgerton drove clear around from the point where he and the two Bedwells had intercepted Mr. Carty and the other four hunters, and drove up to the point where we were talking to the five hunters I had stopped, and asked what was wanted with these men, if I wanted them to bring them all back up to where I was.

Q. Edgerton asked you that?

A. Warden Edgerton asked me that. I told him that it was enough to take their names and addresses and seize their ducks, and report back to me.

Q. Did you make out violation slips on them?

A. I did when the Wardens Bedwell returned to the field later and gave me the names and addresses I had requested.

Q. Of the defendants here in court, how many, if any, were cited upon a pink violation slip at that time?

A. It is not exactly a citation. It is just a memorandum of the facts of the violation.



(Testimony of Alvin W. Elder.)

Q. In regard to how many were there memorandums?           A. Nine.

Q. Were all nine cited at that time of the day?

A. No. There were seven at that time and two observed later in the afternoon.

Q. Who were the two later in the afternoon?

A. That was Vincent Doud and Mr. Farrell.

Q. What else did you do at that time, if anything, after you had written out the slips?

A. After I had written out the slips, why, the five hunters that I had been talking to departed, walking back through the lima beans towards their car, and the Wardens Edgerton and the two Bedwells had started in on the south—or the middle dike from the east road and met us approximately on cross dike 4 and south road dike, where we then dispersed, and each tried to cover separate parts of the club as to——

Q. Did you inspect the premises at that time, the premises of the club?

A. I did. I inspected nearly all the premises I hadn't covered the night before.

Q. Will you state to the court and jury what you observed, please?

A. In the first place, when I had driven out on the south road dike, I observed wide paths of lima beans almost covering the entire width of the road for several yards, probably 75 feet.

Q. Go ahead.

A. Probably a little more than 75 yards. These varied from just covering the surface to a couple

(Testimony of Alvin W. Elder.)

of inches deep, and maybe five or six feet wide in most places. Along the fringe of the lima beans was scattered barley, and out into the water on the pond that would be formed by the cross dikes 2 and 3 and the south road dike and the middle dike, that pond bounded by those dikes I have described, there was a considerable amount of grain in the water. I couldn't say—it was more than a sackful, anyway.

\* \* \*

Q. (By Mr. Johnson): This was in the water?

A. This was in the water in that vicinity.

Q. Mr. Elder, I hand you a photograph marked Government's Exhibit No. 4 in evidence, and ask you if that is the [170] area or if that substantially portrays the scene which you have just described.

Q. This is a scene at another spot.

Q. This is another spot? A. Yes.

Q. Did you happen to see that particular scene?

A. I did.

Q. Does that substantially represent what you saw at that time? A. That is it.

Q. What is that material on the ground in the foreground and appearing to be something out into the water, if you know? A. That is barley.

Q. Did you examine it? A. I did.

Q. Did you pick it up? A. I did.

Q. Did you find the barley any place else on the premises in that manner?

A. I found barley in practically every foot of the premises. I qualify that, with the exception of

(Testimony of Alvin W. Elder.)

cross dike No. 5. I did not find any barley on that.

Q. But in all other parts of the premises?

A. In all other parts of the premises, yes. [171]

Q. You did find evidence of the barley?

A. I did.

Q. What about lima beans, how were they distributed, if they were?

A. The lima beans were spread—well, my thought at the time was that the tail gate of a dump truck had been cracked open a couple of inches and backed down the road, spreading them quite evenly.

\* \* \*

The Clerk: Government's Exhibits 11-A, B, C, D, E, F, and G for identification.

(The documents referred to were marked Government's Exhibits Nos. 11-A, 11-B, 11-C, 11-D, 11-E, 11-F, and 11-G for identification.)

Q. (By Mr. Johnson): What is your answer as a result of looking at those?

A. Those pictures substantially show the conditions on the Santa Clara River Game Preserve on October 22, 1949.

Q. Referring to Government's Exhibit 3 in evidence, what is this bird on the extreme right?

A. That is a cackling goose.

Q. Was that taken from the hunters, too?

A. That was taken from the first two that came in, Mr. James Doud and Edward Maxwell.

Q. Referring to Government's Exhibit No. 5, apparently it is a picture of yourself. What are you



(Testimony of Alvin W. Elder.)

doing in that particular picture, if you recall?

A. In this picture, I am scooping a handful of lima beans into an aluminum cup.

Q. Referring to Government's Exhibit No. 7, what are you doing in that particular picture?

A. I had cut the top off a one-quart milk carton and was filling it with lima beans and barley, which was mixed at this particular point.

Q. Where was that particular point, if you recall? [173]

A. That particular point was in front of the automobile which was parked approximately across cross dike No. 2—it was between cross dike No. 2 and cross dike No. 3.

Q. Did you take any other samples besides those two in the picture?

A. Yes. I took a sample of the barley only with the lima beans in it.

Q. What did you do with those samples after you took them?

A. I put them in the car, and when I returned to Los Angeles, I identified them and wrapped them up.

Q. After you got back to where?

A. To Los Angeles.

Q. Where in Los Angeles did you wrap them up?

A. In my office.

Q. What did you do with them besides wrapping them up?

A. I identified them with a description of what was in each package.

(Testimony of Alvin W. Elder.)

Mr. Johnson: The government offers for identification three objects, one of which is a tin cup with a paper shield over it; the second of which appears to be a paper bag with a slip of paper and writing attached to it; and the third of which appears to be a milk carton with a paper attached to it, some of which has writing on it. [174]

The Clerk: Government's Exhibit 12?

Mr. Johnson: And may we have them marked as 12-A, B and C, your Honor?

The Court: It is all right with me, or you can make them 12, 13 and 14.

Mr. Johnson: That is all right with me.

The Clerk: Government's Exhibits 12, 13 and 14 for identification.

(The articles referred to were marked Government's Exhibits Nos. 12, 13 and 14 for identification.)

Q. (By Mr. Johnson): Now, Mr. Elder, I hand you an object marked Government's Exhibit No. 12 for identification, and ask you if that is the tin cup in which you took the samples which you have described in your testimony. A. It is.

Q. Is that sealing job on there your job, as you have testified?

A. That is the way I sealed it.

Q. Is that writing on the outside yours?

A. That is my handwriting.

Q. This was done, as you have testified, when

(Testimony of Alvin W. Elder.)

you returned to your office.

A. That is correct.

\* \* \*

Q. (By Mr. Johnson): Would you go ahead and open it up? You put it together.

(Witness complying.)

Mr. Johnson: Now, may the record show that the witness has torn open the seal of this cup?

The Court: The record may so show.

Q. (By Mr. Johnson): The material in there appears to be—well, what is that material in there?

A. That is what I would describe as cull lima beans. It is small lima beans and split, cracked and otherwise unmarketable lima beans.

Q. Is there anything else besides the lima beans in there?

A. There is some scraps of dirt.

Q. Wouldn't this be barley, this particular piece here?

A. Yes, that is.

Q. Are those the samples—

Mr. Irwin: May the record show that government counsel picked out one kernel of grain from Exhibit 12?

Q. (By Mr. Johnson): Mr. Witness, can you see any other kernels of grain in Government's Exhibit No. 12 for identification? Are there others?

A. Yes, there are several others.

Q. It is mixed, isn't it? [176]

A. Yes, but that sample is intended to be straight lima beans. The mixed sample is in another package.



(Testimony of Alvin W. Elder.)

Q. Is that one of the packages that you did take, as you testified?      A. That is correct.

Q. That is the one pictured in the photograph marked Government's Exhibit No. 5 for identification?      A. That is correct.

Mr. Johnson: The government offers it in evidence as Government's Exhibit No. 12, your Honor.

The Court: It may be received.

Mr. Irwin: Just a moment. May I ask one or two questions, please, out of order?

The Court: All right.

Mr. Irwin: This was on Saturday morning, you say, that you took this sample?

The Witness: Yes.

Mr. Irwin: When did you return to your office?

The Witness: About 3:00 or shortly after 3:00 Saturday afternoon.

Mr. Irwin: Saturday afternoon?

The Witness: Yes.

Mr. Irwin: Before you returned to Bakersfield?

The Witness: That is correct. [177]

\* \* \*

The Court: It may be received.

(The article referred to was received in evidence and marked Government's Exhibit No. 12.)

Q. (By Mr. Johnson): Now, Mr. Elder, I hand you an object marked Government's Exhibit No.

(Testimony of Alvin W. Elder.)

13 for identification and one marked Government's Exhibit No. 14 for identification, and ask you to state what those are, if you know.

A. No. 13 is a sample of barley picked up on south road dike.

Q. Under the circumstances to which you have already testified?

A. Under the circumstances to which I have already testified.

Q. And on that particular occasion?

A. It was on the morning of the 22nd of October, 1949.

Q. And what is No. 14?

A. No. 14 is a sample of lima beans and barley mixed at a point where the mixture was quite obvious.

Q. And No. 14, would that have any relation to the scene photographed in Government's Exhibit No. 7?

A. That is correct. That is where I was picking up my sample, along the fringes of the lima beans, where the barley was pretty heavy and scattered.

Q. Would you please open up No. 13 and No. 14, please? Is that your writing on the outside of each?

A. That is my writing.

Q. What is this material, if you know, contained in the objects which you have just opened, No. 13 for identification?

A. That is barley.

Q. Is that the barley sample that you took under the conditions to which you testified?

(Testimony of Alvin W. Elder.)

A. That is.

Q. And on that particular occasion?

A. That is correct.

Mr. Johnson: The government offers No. 13 in evidence, your Honor.

Mr. Irwin: One moment on that, your Honor. I notice the identification on this, which was removed before the bag was opened, states that it was taken on the south road dike.

The Witness: That is correct.

Mr. Irwin: So that is where that is.

The Witness: That is correct. That is what I testified to.

The Court: It may be received.

(The article referred to was received in evidence and marked Government's Exhibit No. 13.)

Q. (By Mr. Johnson): Would you open the next object, the one marked Government's Exhibit No. 14 for identification. (The witness complying.)

Q. What does that particular object contain?

A. This represents a sample of lima beans and barley picked up together.

Q. Is this writing on the outside of the package your writing. A. That is my writing.

Q. I notice it says, "Barley and lima beans taken from south road dike of the Santa Clara River Game Preserve, October 22, 1949, A. W. Elder."

A. That is correct. That is my writing.

Q. Is that the sample you took at that time?



(Testimony of Alvin W. Elder.)

A. It is.

Q. And that is portrayed in the photograph marked Government's Exhibit No. 7 in evidence?

A. That is correct.

Mr. Johnson: The government offers this in evidence, your Honor.

Mr. Irwin: No objection.

The Court: It may be received.

(The object referred to was received in evidence and marked Government's Exhibit No. 14.) [180]

\* \* \*

Q. (By Mr. Johnson): Mr. Elder, I hand you some documents marked Government's Exhibits 11-A through 11-G for identification, and ask you if those are the violation slips which you testified you issued on the morning of October 22 to the hunters coming off the premises of the Santa Clara Hunting Club.

\* \* \*

Q. (By Mr. Johnson): Mr. Elder, did you give copies of those slips to anyone?

A. No, I did not.

Q. Did you write these out on that particular occasion?

A. These slips were written by myself on this occasion.

Q. Are these the slips that you are required in your position to write out in the ordinary course of

(Testimony of Alvin W. Elder.)

business [181] whenever you make a citation for a violation of the federal game laws?

A. When we have a case that we think will go into Federal Court and, quite often, cases that we will take into State courts, we fill out this pink violation slip, which gives nearly all the facts we would need to file a complaint on the violation.

Q. Were those wirtten by you on the morning of that day?

A. These were written by myself on the 22nd of October, 1949.

Q. How soon after you notified each individual hunter whom you did notify of an apparent violation, did you write out each of the slips?

A. In the case of the eight hunters that I contacted myself, I made the slips out as I talked to them, as I got the information, such as the name and address from their hunting licenses.

Q. Were these so made out?

A. With the exception of the five men that left by the east end.

Q. What is the purpose of these slips, if you know?

A. To get the information that we want for our records and for court action later. [182]

\* \* \*

After you had taken the samples, did anything else occur at that time?

A. Well, while taking the samples, and before and after taking the sample, why, pictures or photo-

(Testimony of Alvin W. Elder.)

graphs were being taken of the vicinity and of the act of picking up the samples.

Q. And those are the photographs marked Government's Exhibits Nos. 2 through 9, which you have examined.

A. That is correct.

Q. Did you subsequently, on the same day, have occasion to call at the premises of this hunting club?

A. Yes. Both Wardens Bedwell and I returned shortly after 1:00 o'clock on the afternoon of the 22nd to the Santa Clara River Game Preserve.

Q. Could you tell us what occurred on that particular occasion?

A. We observed three parties out on the club grounds. Not knowing who they were, we drove in on that southwest corner again, and as we got to the gate, a party came to the gate, and I asked him if he was hunting.

He said, "Yes. I came in for my decoys."

Q. What gate was this now? [186]

A. The gate at the southwest corner, approximately where your pencil is.

Q. Who was that particular person?

A. That man was Vincent Doud.

Q. And he is present in the courtroom?

A. He is present in the courtroom.

Q. And were there any others?

A. There were two others.

Q. Who were they?

A. One was Raymond Farrell, and the other was a minor, a juvenile, who is not being prosecuted.



(Testimony of Alvin W. Elder.)

Q. Did you have a conversation at that time with them?

A. Yes. I asked Mr. Doud if he was hunting, and I asked him if he killed any ducks.

He said, "Yes. I have three on the pond. I am taking my decoys out now."

Q. Now, who was this?

A. Mr. Doud.

Q. Go ahead.

A. Ernie and Jack Bedwell and myself drove out approximately to where we had parked in the morning, near cross dike No. 2, and I got out of the car, and we separated, I going with Vincent Doud to where he said his ducks were, the blind he had been shooting in which, as I recall it, was on cross dike No. 2. [187]

I explained to him the reason for all of this, and he agreed with me there was a lot of grain there.

Q. This is Mr. Doud?

A. Mr. Doud.

Q. Did Mr. Doud say anything else, or did you say anything else to Mr. Doud?

A. I explained to him about the regulations, of course, went completely through that, and advised him other members of the club had been apprehended in the forenoon.

He did make the remark it was funny he had two brothers there in the morning and they hadn't got word to him.

Then I walked over to where Mr. Farrell and his son were, and the boy said he had not killed a duck, and upon inquiry of his age, I informed him I would make a memorandum of it, but he would not be—

(Testimony of Alvin W. Elder.)

the report of his violation would not be turned over to the United States Attorney as the others would be.

Mr. Farrell admitted to two ducks and turned them over to me, and I again went through the whole explanation of what it was all about.

Q. Was there anything else by way of conversation at that time?

A. Well, it was chiefly along the lines of regulations, the Migratory Bird Treaty Act regulations. I don't recall any other. [188]

Q. What did you then do?                      A. Well, I—

Mr. Irwin: Pardon me. I was waiting until counsel got through. I think I should at this time instruct the witness any statement made by this Mr. Vincent Doud outside of the presence of the other co-defendants strictly should be considered against him alone.

Mr. Johnson: We will stipulate to that.

Q. What next occurred, if anything?

A. Well, we left—I took their five ducks and put them with the others I had in the back seat of my car, left, and drove over to where the Bedwells' cars were, and I left them then and drove straight into Los Angeles, because I wanted to get the ducks into storage and to mark the evidence.

Q. From the defendants here, how many ducks were taken altogether that you know of?

A. The defendants present?

Q. The defendants here in court, yes.

A. Thirty-six ducks and one goose.

(Testimony of Alvin W. Elder.)

Q. Thirty-six ducks and one goose?

A. By that, I arbitrarily assigned Mr. Robert Maulhardt two ducks. It appeared when he and his partner came in, there were five ducks between the two of them. They agreed they had both shot, and neither one would claim how much either one had shot, so I told them that is what I would do. [189]. That was just a sort of arbitrary decision on my part. I will admit that.

Q. Do you recall what kind of ducks these were? Let me put it this way. How many different types of ducks were represented in the 35?

A. Principally, there were sprig or pintail.

Q. You mean otherwise known as pintail?

A. Pintail and Widgeon, redhead, green wing teal, and shoveler, also known as spoonbill.

Q. And then the one cackling goose?

A. The one cackling goose.

Q. Are all of those migratory waterfowl?

A. They are all migratory waterfowl.

Q. And they are ducks?

A. They are ducks.

Q. Except for the goose. What did you do with these ducks that you confiscated?

A. I placed them in my evidence locker at the Los Angeles Ice & Cold Storage plant.

Q. Do you have access to them at this time?

A. Yes.

Q. And they are in that place at this time?

A. They are there.

Mr. Johnson: The government wishes to make an offer of evidence. Should counsel for the defense



(Testimony of Alvin W. Elder.)

require them, we [190] could bring these frozen ducks and one goose into court.

Mr. Irwin: It is not necessary. I will stipulate the defendant had the ducks and the other.

Mr. Johnson: And the goose.

Mr. Irwin: That's right.

\* \* \*

Q. Now, Mr. Elder, from your experience as a game warden, which I think you testified goes back to 1936—

A. That is correct.

Q. —do ducks eat lima beans?

A. It is my belief that ducks eat lima beans, especially if they are soaked and wet, and if they are hungry. Ducks would leave lima beans to eat barley at any time, but it is pretty well known among gun clubs or hunters that hunt in that area that ducks will eat lima beans and have done so.

Q. What about barley? Will they eat barley?

A. Barley is one of their principal foods.

Q. What about geese, do they like lima beans?

A. Geese, I am quite sure, are fond of all legumes, peas, beans, etc. [191]

\* \* \*

The Court: You testified that these ponds were too heavily baited, too heavily baited. Is it legal to bait a duck pond at all?

The Witness: No. That was probably an error on my part. I did not intend to leave that impression at all, because any baiting is illegal.

(Testimony of Alvin W. Elder.)

Cross-Examination

By Mr. Irwin:

Q. You say that any baiting is illegal?

A. Any baiting is illegal.

Q. Do I understand you by that to mean feeding at any time on clubs is illegal?           A. No.

Q. There is a difference?

A. There is a difference between baiting and feeding.

Q. In other words, there is nothing illegal about feeding before the shooting season?

Mr. Johnson: Your Honor, again I must object to that question, which has been asked before. I think that is a matter of law which only this court can decide, and counsel for the government has cited cases directly in connection with them.

The Court: Overruled. [192]

\* \* \*

A. There is nothing illegal about feeding before the shooting season, providing that hunting is not carried on as a result of that feeding.

Q. As a matter of fact, all the duck clubs feed, do they not?

A. No. I would say a very small percentage of them do.

Q. Did you check any of the other clubs immediately around this Santa Clara Game Preserve?

Mr. Johnson: I object to any testimony as to other clubs, not that we don't feel in all fairness to the defendant it might not come in, but it is going to

(Testimony of Alvin W. Elder.)

take us off into a lot of collateral issues, and we have taken up a lot of time already. What may have happened at Point Magu and Ventura or any other club is not important.

The Court: This is cross examination. Overruled.

Mr. Johnson: I know, but I am objecting on the basis it is not a subject to discuss on cross examination and, furthermore, it is collateral and irrelevant.

The Court: The witnesses in this case have been talking about baited ponds.

\* \* \*

A. I have.

Q. In connection with the 1949-1950 season?

A. In connection with the 1948-1949 season. That was a year previous. The 1949-1950 season, I discussed it only with the keeper at the Ventura County Club and at the Point Magu Club. I walked out onto the blind while waiting for the keeper there to bring in some hunters, and our party was waiting there talking to other hunters. No grain was found.

Q. We will get along very rapidly if you will just answer my question.

Mr. Irwin: I move to strike out the last few lines of the answer as not responsive.

\* \* \*

Mr. Irwin: I want the answer to be yes or no.

The Court: The part of the answer, "no grain was found," may go out.

Q. (By Mr. Irwin): Mr. Elder, all I am trying to do is to get the facts. I am not trying to confuse



(Testimony of Alvin W. Elder.)

you. You stated very few of the clubs feed. What I am coming to is to ask you if you know whether or not the Ventura Gun Club feed.

A. I have been told they do.

Q. Do you know whether or not the Point Magu Club feeds? A. I have never seen them.

Q. Do you know whether the new Gentry Club which is adjacent to the Senta Clara Game Preserve, feeds? A. I do not.

Q. You don't know? A. I do not know.

Q. So when you said a little while ago that very few of the clubs feed, you didn't know what you were talking about, did you?

A. I think I do.

Q. Didn't you just tell me you didn't know what these clubs did right around there? How can you say they did or they did not if you don't know what they did?

A. To my knowledge, they weren't feeding.

Q. I am sure you want to be fair, Mr. Elder. Now, with reference to these beans being duck feed, you know Mr. Macklin, who is head of the Southern California Division of the Fish and Game?

A. I do.

Q. You had a conversation with him, did you not, after the events of October 22nd, concerning what had happened up at Oxnard?

A. I did.

Q. In the course of that conversation, did you not say to him that the beans were not duck feed, in your opinion?

(Testimony of Alvin W. Elder.)

A. I have never said that.

Q. You know Mr. Arnold, who is the State Game Warden? [195]

A. I do.

Q. In fact, you were at his home when you got these telephone calls from Mr. Spicer to go over to Oxnard, weren't you?

A. That is correct.

Q. You met with him again on Sunday, the 23rd?

A. That is correct.

Q. Did you not tell Mr. Arnold when you returned on Sunday that there were some lima beans there, but that the ducks would not eat lima beans?

A. I did not.

Q. You are positive of that?

A. I am positive of that.

\* \* \*

Q. In your statement just before your direct examination was concluded, you said you believed the ducks would eat [197] lima beans, especially if they were wet. Were the lima beans wet up there?

A. No.

Q. They were not?

A. Not until the rain has come.

Q. Is there any evidence of it having been raining? Were they moist?

A. They were not at the time. [198]

\* \* \*

Q. (By Mr. Irwin): Mr. Elder, adverting to a different subject for the moment, I understood you to state that from—of these nine defendants, you figured, as you put it, arbitrarily, you took a total

(Testimony of Alvin W. Elder.)

of 36 ducks and one goose? A. That is right.

Q. As far as bag limits are concerned, nine would have been entitled to 45, so there is no question of the bag, or anything like that?

A. No, there is no question of being over the limit.

Q. This morning on your direct examination, I understood you to say that when you were out there at 1:00 o'clock in the morning, you were dependent on a flashlight, is that correct?

A. I had two flashlights. [199]

Q. You had what?

A. I had two flashlights.

Q. With the aid of these flashlights, you stated that you placed them in the water, and you could see grain on the bottom, which you estimated to total two bags, is that correct?

A. I did not say I flashed them in the water. I walked into the water, walked into the grain, and discovered it that way. I might not have mentioned it that way, but that is what I meant.

Q. What were you wearing?

A. I was wearing light worn-out shoes, oxfords.

Q. And you could tell from what your feet traversed that you were walking over a couple of bags of grain, is that correct?

A. I could tell when I walked into it that it was something different from the mud and grass, and so forth, that was growing in the pond.

Q. Just you could tell it was something different?

A. That's right.



(Testimony of Alvin W. Elder.)

Q. Was it that difference that prompted you to give the direct testimony that you observed two bags of grain?

A. Yes. I observed them with the flashlight.

Q. Under the water?

A. Not all of it. Some of it was out of the water. [200]

Q. Actually, you don't know what was under the water from what the soles of your feet touched, other than that it was not even, isn't that about the size of it?

\* \* \*

A. No. My recollection is that I could see enough through that shallow water with a flashlight after I discovered it to make an estimate or a guess.

Q. Did you do anything else?

A. I felt of it.

Q. What is that?            A. I felt of it.

Q. You did. In what way did you feel of it?

A. I picked up a handful.

Q. One handful?            A. Yes.

Q. On that basis, you give it as your figure that there were two bags?            A. That is right.

Q. Let's use this Government's Exhibit No. 1. Will you just show me where it was that you walked upon the waters there?

A. I walked into the water from various points along [201] the dike.

Q. What point was it?

A. It was approximately this vicinity here.

(Testimony of Alvin W. Elder.)

Q. You have pointed to the intersection of dike No. 5 and the south road? A. No. 4.

Q. No. 4 and the south road?

A. That is right.

Q. In other words, are you referring to the same location as is represented by your Exhibit No. 4, which picture was taken the following day? I think that was located at the same place.

A. I am quite sure this represents approximately what I saw that night.

Q. The previous night? A. That is right.

Q. You said you estimate there were two bags there. You have told us in your direct examination what you said was grain mixed with the barley, and so on, was there. What did you estimate was the total amount of grain on those 40 acres?

A. Well, my estimates ran from a few ton to quite a few ton. I recall at one time, after looking it over in daylight, that I thought there was between two and two and a half tons of barley, and probably eight or ten tons of lima beans. After the pictures had been enlarged, I revised that downward [202] slightly.

Q. As a matter of fact, didn't you first tell Mr. Paul of the Ventura Press that there were 15 tons of grain there?

Mr. Johnson: If your Honor please, I am going to object to what statements were made to the press by the witness. It has nothing to do with the issues of this case. It occurred subsequent to the

(Testimony of Alvin W. Elder.)

21st of October, and we don't wish to try the case in the newspapers.

Mr. Irwin: I want to show various inconsistent statements, your Honor, going to his credibility.

The Court: Overruled.

\* \* \*

The Witness: No.

Q. (By Mr. Irwin): By the way, when was it you told Mr. Macklin, how soon after October 22?

A. I think it must have been about the 25th or 26th.

Q. In response to Mr. Macklin's inquiry, didn't you tell him there were four tons of grain?

A. No.

Q. On the Sunday after the 22nd, which would have been the 23rd, when, as you have testified, you returned to the vicinity of Bakersfield and again met Mr. Arnold, didn't Mr. Arnold ask you what you had found over at the Santa Clara [203] preserve, and you told him three or four buckets of grain? A. No.

Q. One of the other witnesses, Mr. Elder, I believe it was, Mr. Spicer—you have been in court throughout the trial—was asked whether or not he saw any evidence of cows having been on the preserve. I understand from you that you were present, of course, when the pictures were taken, Exhibits 2 to 9, inclusive. I want to direct your attention to Exhibit 8 which, as I understand it, is looking from dike 3 towards dike 2, where there are two automobiles, one of which is your car. I direct your attention to various dark splotches all



(Testimony of Alvin W. Elder.)

along there. Do you recall, as a matter of fact, seeing that, and that was in fact cow manure?

A. It was not.

Q. No cow manure there?

A. Not that I ever saw.

Q. That afternoon when you went back and these three people were there that you saw, no one of them was included in the group that you had stopped that morning? A. No.

Q. In other words, you don't want the jury to think any one of these people you stopped in the morning had returned that afternoon?

A. No, I do not.

Q. These were three separate people from the group you [204] stopped in the morning?

A. That is correct.

Q. I believe you testified that when you went over the dikes sometime in the night, around 1:00 o'clock in the morning, you saw samples of grain, which made it appear to you someone had gone along with a sack with a hole in it over his shoulder; is that your testimony? A. That is correct.

Q. If it appears that one of the defendants in this case caused some grain to be spread with a carry-all approximately 10 days before the season opened, would you say that the grain that you saw was evidently distributed at a later date and in another manner?

A. I could not testify what the date was it was put out.

Q. Precisely. That is compound. This grain

(Testimony of Alvin W. Elder.)

that you saw on the night of the 22nd, in your opinion, had been dropped out of a sack by somebody walking along?

A. That was given as my opinion. I can't say. I didn't see the man doing it.

Q. You have no way of knowing who did it, whether it was one of the defendants?

A. That is right.

Q. Or somebody else that might want to embarrass them? You don't know?

A. That is correct. [205]

Q. My attention has been called—so that I may in no way mislead you—that the question I asked you about your statement to Mr. Paul of the Ventura Press, used the term 15. I understand that I should have asked if you did not tell him 10 to 15 tons? A. That is correct.

Q. You did tell him that? A. I did.

Q. Your own testimony now is that you revised that downward to 2 tons?

A. No, I didn't say that. I did not say that.

Q. What do you say, sir?

A. I can't make an exact estimate of something like that. I said after I had reviewed the pictures in their enlarged form, I had revised it downward, but I would still think several ton.

Q. You do deny having told Mr. Arnold that you found about three or four buckets on the preserve?

A. If that was said, it must have been said, as I

(Testimony of Alvin W. Elder.)

had said to Mr. Maxwell, that I could scoop up three or four buckets at several points.

Q. My question is, so there won't be any dispute about it, did you or did you not tell him that the quantity of grain you found was three or four buckets on that preserve? A. I did not. [206]

### Redirect Examination

By Mr. Johnson:

Q. Mr. Elder, some reference was made in cross-examination to whether or not you knew other clubs in your district were feeding. I think you said you didn't think they were. Is that it?

A. I replied—I believe the question was not exactly like that.

Q. Well, at any rate, I think Mr. Irwin asked you whether it was not true most of the clubs were feeding. A. That is correct.

Q. And your answer is no, it was not true; is that it? A. That is correct.

Q. How many clubs are there in the district for which you are responsible?

A. Approximately 175.

Q. Were you referring to all of those clubs?

A. I was.

Q. Or just those in Ventura County?

A. I was referring to the club in my district, the club I am more or less familiar with.

Q. And responsible for in regards to the regulations? A. Yes.



(Testimony of Alvin W. Elder.)

Q. And your testimony was, from your experience, most [207] of those clubs do not feed?

A. That is correct.

Q. There was some questioning on cross-examination with regard to a conversation between yourself and Mr. Arnold, in the one instance, regarding lima beans, and in the second instance with a Mr. Macklin regarding lima beans. Do you wish to tell the substance of that conversation, or would you tell the substance of those conversations? First, tell us about Mr. Arnold.

Q. I don't recall discussing lima beans with Mr. Arnold, other than I told him there were several tons of lima beans on the property.

Q. Did you use the phrase, "three or four bucketsful," during that conversation?

A. At no time.

Q. That is Mr. Arnold. What about Mr. Macklin? Did you have a conversation with him about it?

A. The conversation with Mr. Macklin about lima beans was as to their use as duck feed, whether they were duck feed or not, and we agreed that lima beans would not seem an important duck feed, and I think Mr. Macklin agreed with me under certain conditions lima beans would be used and could and would be duck food, but it was not the way the question was phrased to me.

Q. Did you discuss with Mr. Macklin on that occasion [208] or any other occasion the amount of

(Testimony of Alvin W. Elder.)

grain that you had seen on these premises of this Santa Clara Hunting Club?      A. Yes.

Q. How much did you tell him you had seen?

A. At first I told him, as I stated to the defense counsel, that there was from two to two and a half tons of barley and possibly eight or ten tons of lima beans.

Q. And you revised that downward?

A. I have revised that downward. The discussion with Mr. Macklin was in the upper brackets.

Q. Did you ever revise it downward in a conversation with Mr. Macklin after that?

A. No.

Q. Mr. Elder, at my request, did you secure a wild duck within the past 10 days and observe its feeding habits?      A. I did.

Q. Could you tell us the results of that observation? Excuse me. Strike that. Where did you keep this duck?      A. At my home.

Q. What kind of a duck is it?

A. It is a wild mallard.

Q. Where did you get it?

A. From the Waugus Land Company at Antelope Valley.

Q. Where did you keep it?

A. In a pen with a small concrete pond. [209]

Q. Have you been feeding it?

A. I have been feeding it.

Q. Did you observe its feeding habits?

A. I did.

(Testimony of Alvin W. Elder.)

Q. Particularly with respect to lima beans, what did you observe?

A. At first I fed it lima beans and barley, figuring I couldn't let the poor thing starve. I figured it would eat the barley, if it didn't eat the lima beans, but from my first observation both lima beans and barley were gone, and so gradually I cut down the amount of barley, and now it is eating lima beans solely.

Q. You put it in a dish?

A. I put it in a dish and counted the number of beans. I am using baby or lima beans which are about as large as my little fingernail.

Q. Are they similar to the ones here?

A. They are approximately the same size.

Q. Are you feeding them wet or dry?

A. Dry.

Q. Do you have any children around your house?

A. No.

Q. So that they might have gone in and taken the beans themselves and eaten them?

A. No. [210]

Q. How long did you observe the duck in this manner?

A. I have ever since I have had the duck.

Q. How long has that been?

A. About eight days.

Q. Do you still have the duck?

A. I do.

\* \* \*



(Testimony of Alvin W. Elder.)

Recross Examination

By Mr. Irwin:

Q. Of course, Mr. Elder, with your 14 years experience as a game agent, you wouldn't want the court and jury to think that what a duck would do under confinement, with no other choice, would be a fair test as to what it would choose for its eating habits if it were in its native habitat, would you?

A. No, I wouldn't want to tell them that.

Q. As to these 175 clubs you have under your jurisdiction, do I understand that you are not familiar with all the clubs in the Ventura area, as to whether they feed before the season is open or not?

A. No. I have been on their property.

Q. It is also true throughout your district, in some areas there is a great deal of natural feed and water, and in other areas, like in Ventura, there is a different situation than that found around the Salton Sea or the Imperial Valley? [211]

A. They would have to feed there, if they wanted duck shooting.

Q. But what I am getting at is that there is a great deal of crops and grain raised naturally in, let us say, in Imperial, around Imperial, so that the conditions there are not the same as up around Ventura?

A. They are almost the same. Ventura is an agricultural county.

(Testimony of Alvin W. Elder.)

Q. As a matter of fact, conditions down in Imperial are such that the birds feed off the growing crops, much to the anguish of the farmers, don't they?      A. That is true.

\* \* \*

Q. (By Mr. Irwin): By the way, what did you tell me, again, were the types of ducks in those 35 ducks?

A. Sprig or pintail, widgeon, green wing teal, spoonbill, and a redhead. [212]

\* \* \*

Q. Mr. Elder, I overlooked one thing, and that was I served you with a subpoena asking you to produce the original of a letter sent you by Mr. McCormick, one of the defendants. Did you bring that with you?      A. Mr. Johnson has it.

Mr. Irwin: I just want to identify it, your Honor, while the witness is here. May I have this identified as the defendants' exhibit next in order?

The Clerk: Defendants' Exhibit B for identification.

(The document referred to was marked Defendants' Exhibit B for identification.)

Q. (By Mr. Irwin): I show you Exhibit B for identification, Mr. Elder, which is one sheet of paper, bearing heading, "Oxnard, California, January 19, 1949," addressed to Mr. A. W. Elder, and bearing an ink signature of James McCormick, and underneath the typewritten signature of James McCormick.

(Testimony of Alvin W. Elder.)

Attached thereto is an envelope, Oxnard, California, cancellation stamp of January 20, 1949, addressed to Mr. A. W. Elder, United States Game Management Agent, return address, James McCormick, Oxnard, California, and ask you if that letter came to you in the envelope attached hereto and was received by you shortly after January 28, 1949.      A. That is correct. [216]

Q. Have you had an opportunity to refresh your recollection on that letter? Did you ever do anything or acknowledge this letter in any way, Mr. Elder?

A. I stopped in Oxnard once, but I couldn't locate my man, so I was saving it for a later date.

Q. Up to October 22, however, you had not contacted Mr. McCormick in response to this letter, either in person or by acknowledging it by letter?

A. That is correct.

Q. I don't want to prolong this, but just to cover it in a quick overall question, had you been on the premises of the Santa Clara Gun Club prior to 1:00 a. m. on the 22nd, within the previous 10 days?      A. No.

\* \* \*

(The letter referred to was received in evidence and marked Defendants' Exhibit B.)

### Redirect Examination

By Mr. Johnson:

Q. You have testified that this letter was received by you on approximately the date shown from



(Testimony of Alvin W. Elder.)

Mr. James McCormick, Ditch Road, Oxnard, California. If you know, is this in reply to a letter previously sent by you to Mr. McCormick?

A. It is.

Q. Approximately when was that letter written by you to Mr. McCormick at Ditch Road, Oxnard?

A. It was written about the middle of January.

Q. Where was it written?

A. It was written in my office.

Q. That is here in the Federal Building?

A. In this building.

Q. Did you keep a carbon copy of that letter?

A. I did.

Q. Did you keep that carbon copy in your file?

A. I did.

Q. Is that part of your usual procedure in writing business letters, to keep a carbon copy of them?

A. That is mandatory in our office.

Q. Who typed the letter? A. I did. [218]

Q. You don't have a secretary?

A. I do not.

Q. Did you type it on a machine yourself?

A. I did.

Q. Did you have a carbon sheet underneath the original? A. I did.

Q. And a carbon came out as a result of it?

A. That is right.

\* \* \*

Mr. Johnson: The government offers in evidence this letter concerning which there has been testimony as Government's Exhibit No. 15. It is a let-

(Testimony of Alvin W. Elder.)

ter on the letterhead of the United States Department of Interior, Fish and Wildlife [219] Service, Los Angeles 2, California, dated January 14, 1949.

The Court: It may be admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 15.)

\* \* \*

### LESLIE F. EDGERTON

called as a witness on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. Edgerton, where do you reside? [220]

A. I reside in Filmore.

Q. What is your occupation?

A. I am a State Fish and Game Warden and Deputy United States Federal Warden.

Q. In what territory do you serve, what area?

A. I have been assigned to Ventura County.

Q. Do you know the defendants in this case?

A. I know two of them.

Q. Who are they?

A. Mr. Carty and Mr. Bob Maulhardt.

Q. Do you know where the Santa Clara River Game Preserve is?

A. Yes, I do.

Q. Where is it?

(Testimony of Leslie F. Edgerton.)

A. It is located near the mouth of the Santa Clara River on the McGrath property.

Q. Did you have occasion on the 21st of October, 1949, to call upon or visit the premises of that club?      A. I did.

Q. What was the circumstances of your making that visit?

A. After a radio call from Mr. Bedwell to talk things over, we had met.

Q. Who is "we"?

A. Warden John Spicer, Jack Bedwell, and myself had [221] met at the Mound Water Company. Mr. Bedwell had talked about a citation he had issued that day and talked about the people in the case. He then mentioned he had received word that there was some lima beans on the property, and he thought there might be some grain and we should investigate.

Q. Did he say he had seen it or received word?

A. I understood him to say he thought there was some down there. He said he heard there was some lima beans and he thought there might be some grain.

Q. He didn't say he had seen it?

A. I didn't hear all the conversation. That is what I heard.

Q. What occurred then?

A. We got in my car and drove to the northwest corner adjacent to the club and proceeded south on the west dike through the middle dike, and we all had flashlights, and we more or less spread out



(Testimony of Leslie F. Edgerton.)

and started down the middle dike, spasmodically lighting our flashlights, and we took occasional detours for slight distances down the cross dikes. I would say I went as far east as the No. 5 dike, maybe the No. 4 dike. At no time when my flashlight was on did I fail to see grain.

Q. What kind of grain?

A. That I would not say. I have been told it is barley, but I couldn't say. [222]

Q. Did you pick some up?

A. I picked some up, yes, I did.

Q. I hand you an object marked Government's Exhibit 10 in evidence. Is that some of the material you found on the premises, which you call grain? A. Yes.

Q. Could you further describe the condition of the premises on that particular visit?

A. Being night, you couldn't see an overall picture, but at no point did I fail to see grain. It was scattered about very thoroughly, that is, very—it was widely scattered throughout the middle dike, and at two places on that middle dike, about 10 feet square, there was a much larger quantity of grain and it was much thicker. On the side dikes, it looked like the grain had been placed there in one of two manners, either it had been dumped by can or some container in piles of half a bucketful, and in other places there were strings or lines of grain which could be left by a sack with a hole in it. It could have been dragged or carried, or

(Testimony of Leslie F. Edgerton.)

it could have been broken, with a hole in it, but there was a line of grain.

Q. Did you observe anything else besides this grain which you have identified?

A. That's all that we saw that night, was grain. We saw it everywhere we looked, on all the cross dikes and the [223] middle dike. It was solid.

Q. Did you look at the blinds?

A. No, I didn't look in the blinds.

Q. Did you go around the blinds?

A. No, we didn't go around the blinds.

Q. Did you see any in the water?

A. I saw none in the water that night, no.

Q. Did you see any wildlife there?

A. I couldn't say I saw it. We heard them. They took off, quite a quantity of ducks took off. You could hear them fly away.

Q. How did you know they were ducks?

A. They quacked and whistled and beat their wings.

Q. What did you do then after you observed those conditions?

A. After we had all got together again on the west end of the middle dike, we agreed there was much too much grain there, and that somebody should be given the word. We designated Mr. Spicer to call his superior, which we had been told to do.

Q. Who was the superior up there at that time?

A. Mr. Hecker is my superior.

Q. He is no longer living?

(Testimony of Leslie F. Edgerton.)

A. He is deceased.

Q. Did you leave then? [224]

A. After we had agreed Mr. Spicer would do the phone calling, we returned to our respective cars and went home.

Q. Did you subsequently make a visit to the premises of this hunting club?

A. I did, the next morning.

Q. Tell us about that.

A. We had all met, and after that we proceeded to a clump of willows, which I measured recently as one or a little over one-tenth of a mile from the club. From that clump of willows, five of us observed hunters hunting out of the blinds on the dikes of the Santa Clara River Game Preserve, and we watched the hunters shooting, and we watched the ducks fall.

Q. Did you subsequently, after observing them, go down and enter the premises?

A. We did. After Agent Elder and Spicer had contacted Mr. Carty at the corner and had gone around to the far side of the club.

Q. Could you see them contact Mr. Carty?

A. We did.

Q. Did you look through binoculars?

A. We all had binoculars, yes.

Q. Then you went down and entered the premises yourselves? A. Yes. [225]

Q. Tell us about that.

A. First, the hunters started out on the road, and in my car the two Wardens Bedwell and my-



(Testimony of Leslie F. Edgerton.)

self intercepted them at the east end of the middle dike and the east road.

Q. Who were those hunters?

A. Mr. Carty was the only man I recognized.

Q. How many others were there?

A. There were four other hunters.

Q. What then occurred?

A. The Bedwells got out, and I drove around, because we had watched Mr. Carty and Mr. Elder talking, and Mr. Elder hadn't taken Mr. Carty's ducks, and there was a doubt in our minds whether Agent Elder wanted us to seize all the ducks or not, so I drove around the same route I had taken to the southwest part of the club to ask Agent Elder if he wanted the ducks seized. While there, his car was parked on what we call Lima Bean Road, and I asked Mr. Elder if he wanted the ducks seized, and he said yes. I then returned to the Bedwells and the defendants.

Q. "And the defendants," what do you mean by that?

A. Well, some of them had been excused. The guests had been excused.

Q. There was Mr. Carty and four other hunters?

A. Mr. Carty and four other hunters were at the east end of the middle dike. [226]

Q. And the Bedwells were——

A. The Bedwells were then marking these ducks, tying the limit of ducks together and putting the names of the respective hunters on these ducks.

Q. That was Jack Bedwell?

(Testimony of Leslie F. Edgerton.)

A. That was Jack Bedwell and Ernie Bedwell. Mr. Carty, as I drove up, was placing his ducks in the back of his car, and I told Mr. Carty we would have to have his ducks, and he said, "Take them."

Q. Did he say anything else?

A. I took the ducks from his car and gave them to the Bedwells, and Mr. Carty walked over and spoke to me.

Q. What did he say?

A. He mentioned something about a technical case, and I told him I didn't think it was a technicality.

He then said if we wanted to be technical about it, we could pick up every club in the area.

Q. What did you say?

A. I merely agreed with him. I was not making conversation.

Q. What then happened?

A. So they got in their car and drove away and the two Bedwells and myself put the ducks in the back of my car and we proceeded west on the club, more or less inspecting, until we met with the other wardens. [227]

Q. Where did you enter the club?

A. At the middle dike.

Q. What did you observe as to the premises?

A. I didn't see anything at the far edge of the club.

Q. When did you start seeing something?

A. Up toward the No. 4 dike, where the grain started.

(Testimony of Leslie F. Edgerton.)

Q. Would you describe the condition of the premises as you saw them?

A. They are much more visible in the daytime than at night.

Q. What did you see?

A. Looking up the middle dike, there wasn't a square foot of the dike that did not contain barley, and everywhere you looked, you saw barley, and every cross dike, all had barley.

Q. What cross dike did you walk on?

A. I couldn't say. It was at random.

Q. How many cross dikes?

A. I walked on two or three or possibly four dikes.

Q. But No. 5 didn't have any?

A. I didn't see any on No. 5.

Q. Go ahead. What else did you do?

A. Together, when we had covered the ponds and the dikes, we met by Agent Elder's car, and Warden Bedwell suggested taking pictures, that he had his camera. I asked [228] Agent Bedwell if he wanted the ducks in my car along with the other ducks he had.

Q. Did you ask Agent Bedwell that?

A. I asked Agent Elder that.

Q. Go ahead.

A. I then walked back to my car and drove my car around and parked it beside Agent Elder's car and took the ducks from my car and placed them on the ground where some he had seized were, and he took the rest out of his car and put them on



(Testimony of Leslie F. Edgerton.)

the ground. Then Warden Bedwell took his pictures.

Q. Showing you Government's Exhibits Nos. 2 through 9 in evidence, do those scenes photographed or portrayed in those pictures represent the condition of the premises of the Santa Clara Game Preserve as you saw them on the occasion in question and to which you have testified? Look them over. That is you pictured in No. 9, isn't it?

A. It is. Yes, these pictures depict the general outlay of the——

Q. That is particularly along the south road?

A. These pictures were all taken on the south road dike.

Q. But you have also observed, as you have testified, in the most northern part of the area?

A. In my opinion, there was much more grain on the middle dike than on the south dike. [229]

Q. Were there any lima beans on the middle dike?

A. The only place there were lima beans was on the west end of the south road dike that I saw.

Q. One of these pictures has a couple of cars in it. Referring to Government's Exhibit No. 8 in evidence, whose cars are those in the picture?

A. The dark one on the right is Agent Elder's car, and the light one on the left is my car.

Q. And that is parked in the position which, according to your testimony, you arrived at when you came there?

A. I drove over to bring the ducks over.

(Testimony of Leslie F. Edgerton.)

Q. Could you give us an estimate as to the distance between, say between these dikes here, all of them, the cross dikes? A. I could not.

Q. Could you give any estimate as to the length or breadth of the property?

A. Last Saturday I took my car and it measured almost a quarter of an inch—a quarter of a mile north and south and about a third of a mile east and west.

Q. You mean like so?

A. That was the outside dimensions of the club.

Q. Then I must have mine somewhat out of scale.

A. That is what my speedometer said.

Q. How far was this clump of willows from the northwest [230] corner?

A. Slightly over one-tenth of a mile, and that is on a road. As the crow flies, it might be a tenth of a mile.

Q. Did you take any samples of the grain?

A. I did.

Q. When was that?

A. I took it the night of the 21st.

Q. What did you do with the sample?

A. I didn't bring them in the next morning. Everybody had so many samples, we decided to forget about mine.

Q. Handing you Government's Exhibit No. 12 and 14, would you examine the material in those exhibits? Would you regard those as samples of the material which you found on the premises of

(Testimony of Leslie F. Edgerton.)

the Santa Clara Club on the morning of October 22nd?      A. I would. They are similar.

Q. Did you see any ducks when you arrived on the premises on the morning of October 22nd?

A. I don't recall seeing any on the water. I saw ducks flying over and I saw ducks shot, and I saw some ducks fall.

Q. How long have you been a game warden?

A. I have been with the State Fish and Game for eight years.

Q. From your experience in that capacity, do you think [231] ducks will eat barley?

A. I know they will eat barley.

Q. How about geese?

A. Geese definitely will eat barley. [232]

\* \* \*

### Cross-Examination

By Mr. Irwin:

Q. Mr. Edgerton, I believe you testified—I am not sure—in addition to being State Fish and Game Warden, you [235] are also a Deputy Federal Game Warden.      A. That is right.

Q. How long did you say you were with the service, approximately?

A. I have been with the Division of Fish and Game for eight years.

Q. By the way, so we won't needlessly go over a lot of matters, you were in the court room throughout the testimony of the other agents who preceded you on the stand?      A. I have been.



(Testimony of Leslie F. Edgerton.)

Q. You know the defendant Mr. Maxwell, do you not?

A. I do not. I know him since I have been here. That is all.

Q. Do you recall having received a telephone call from a man who identified himself as E. C. Maxwell about three weeks before the season opened?

A. I do not.

Q. You do not?                      A. I do not.

Q. I beg your pardon. Did you yourself call Mr. Maxwell?                      A. I called Mr. Maxwell.

Q. You had a conversation with him?

A. I did.

Q. What was it about? [236]

A. I called Mr. Maxwell for the express purpose of finding out the acreage of the gun club and the officers of the gun club for the survey which all wardens make to send to the San Francisco office.

Q. That was how long prior to the opening of the season?

A. On or about the 8th of October.

Q. And he gave you the information you requested?

A. He gave me the information I requested.

Q. Did he not in turn ask some information from you?                      A. That he did.

Q. Isn't it a fact that he asked you what the regulations were for the coming shooting season?

A. He asked me if there had been any changes in the regulations.

(Testimony of Leslie F. Edgerton.)

Q. What did you tell him?

A. I told him not that I knew of.

Q. When he spoke about whether or not there had been any changes in the regulations, did he ask you whether or not there had been any change in the regulations with regard to feed?

A. That is true.

Q. And isn't it a fact that you told him that, after saying there were no changes, you were telling the other gun clubs that they could feed up to 10 days prior to the opening [237] of the season?

A. No, that is not exactly right.

Q. What did you say in that regard?

A. We informed the other clubs the same way. We went to the other clubs and talked to the caretakers and asked the information that I asked of Mr. Maxwell.

They, like Mr. Maxwell, brought up the feeding question, and it was mutually agreed that if they quit feeding within 10 days before the season, the feed should be eaten up, but we further stipulated under no circumstances were they to shoot over a baited area.

\* \* \*

Q. (By Mr. Irwin): Your answer is what you told the other caretakers. Did you tell Mr. Maxwell substantially what you just now stated?

A. I told Mr. Maxwell what we had told the other clubs. I did not talk to Mr. Maxwell directly. I told Mr. Maxwell what we had told the other clubs.

(Testimony of Leslie F. Edgerton.)

Q. When you say you didn't talk to him directly, you don't quite mean that. You were talking to him and you told him you had given the other clubs information that it had been mutually agreed that they could feed up to 10 days before the season opened? A. No, not necessarily. [238]

Q. I want to know what you told Mr. Maxwell.

A. I believe I have already stated that.

\* \* \*

The Court: What did you tell Mr. Maxwell.

The Witness: I will repeat. I told Mr. Maxwell we had gone and talked to the other clubs to get the information for the San Francisco office on how many acres they had on their club, who was president of the club, who was secretary, or the treasurer of the club.

There was brought up by them questions about the feeding regulations. We told them there were no changes. We talked it over and they talked about feeding, and we felt together [239] that if they quit 10 days before the season opened, that the feed should be eaten up, if there wasn't an excess amount of feed put out, the ducks should eat the feed up, but Mr. Warden Spicer and I further said under no circumstances were they to shoot over a baited area.

That is what I told Mr. Maxwell.

Q. (By Mr. Irwin): All that is what you told Mr. Maxwell?

A. I wouldn't say word for word, but that is the gist of the conversation.



(Testimony of Leslie F. Edgerton.)

Q. Did you tell them what you and Mr. Spicer agreed?

A. Mr. Spicer and I had agreed on nothing.

Q. You agreed among——

A. There is Mr. Spicer, Mr. White, and Mr. Muldoon, and myself.

Q. They were all present when you were talking to Mr. Maxwell?

A. I was by myself.

Q. Did you include in your talk to Mr. Maxwell what you and Mr. Muldoon and Mr. Spicer had agreed on?

A. That is right.

Q. Didn't you further state you would check and if there was anything additional, you would call back and notify Mr. Maxwell?

A. Mr. Maxwell asked me if there had been any changes, [240] and I said I did not think so.

He said, "Aren't you wrong? Isn't it true there is a 72-hour regulation?"

He said Mr. Carty had talked to the Attorney-General and got a ruling from the Attorney-General that 72 hours was sufficient time.

I told him I would check up on it and I laid the phone down and read the federal regulations again and came back and told Mr. Maxwell I saw no changes, but I would call either Agent Elder or Mr. Macklin, and if there were any changes, I would notify Mr. Maxwell.

Q. And you never called him back.

A. There were no changes.

Q. When you said you looked at the federal regulations, there is nothing in the federal regulations

(Testimony of Leslie F. Edgerton.)

about whether they shall feed up to 10 days or anything else, is there?      A. No.

Q. So you wouldn't want the jury to think you looked at some regulation about what they could do about feeding?      A. I did.

Q. There is nothing in the regulations about whether it is 10 days or two days, or anything, is there?

A. The regulations say that they shall not shoot over a baited area. [241]

The Witness: It stiplifies no time.

Q. (By Mr. Irwin): Between the time you called Mr. Maxwell on the telephone and on the evening of October 21 when, I think you stated, you were at the club, had you been in the vicinity of the Santa Clara Game Preserve?

A. I had not.

\* \* \*

## R. E. BEDWELL

called as a witness by and on behalf of the government, having first been duly sworn, was examined and testified as follows: [242]

### Direct Examination

By Mr. Johnson:

Q. Mr. Bedwell, where do you reside?

A. 318 Mohawk Road, Santa Barbara, California.

(Testimony of R. E. Bedwell.)

Q. Will you speak up loud enough so everyone can hear you?      A. I will attempt to.

Q. What is your occupation?

A. State Game Warden and Deputy United States Warden.

Q. What is your principal job of those two?

A. Enforcement of the state laws and the federal regulations.

Q. Are you paid for your position as Deputy Federal Game Warden?      A. No.

Q. Is that the custom with regard to those jobs?

A. That is right.

Q. Do you know the defendants in this case?

A. I know several of them.

Q. Do you know Mr. Carty and Mr. Maxwell?

A. I do.

Q. And most of the others?      A. I do.

Q. How long have you been a game warden?

A. Since the 7th day of July, 1927. [243]

Q. Always in California?

A. That is right.

Q. How long have you been up in that particular area around Oxnard?

A. Practically—in fact, all that time, excepting about 18 months.

Q. You know where the Santa Clara River Game Preserve is located, do you not?      A. I do.

Q. Directing your attention to the date of the 21st of October, 1949, were you in the vicinity of that game preserve?      A. I was.



(Testimony of R. E. Bedwell.)

Q. Did you actually visit the premises on the 21st of October?      A. No, I did not.

Q. But you were near there?      A. I was.

Q. Did you observe anything at the time you were near there?      A. Well——

Q. Excuse me. First tell us about what time of the day it was on the 21st.

A. Well, this was around 10:30, 11:00 o'clock, I imagine, maybe a little later than that. I didn't pay much attention. [244] We were in the area.

Q. Who was with you?      A. Jack Bedwell.

Q. He is your son, is he?      A. That is right.

Q. Go ahead.

A. We were in this area, listening for early shooting, and we were parked at the northwest corner of the Santa Clara Game Preserve ponds. We were parked there as the hunters from the club went out into the blinds.

Q. What time did they go out into the blinds?

A. It was approximately—well, I didn't look at my watch, but I would say it was around 11:30.

Q. What time did the season open?

A. At noon, 12:00 noon.

Q. Did you or did you not observe any wildlife around the premises of this club?

A. Yes. I made an estimate at the time to Jack Bedwell that I estimated there was at least 15,000 birds got up off of the ponds as they started to go out to the blinds.

Q. Were they ducks?      A. They were ducks.

Q. Were there any geese?

(Testimony of R. E. Bedwell.)

A. I did not observe any geese. [245]

The Court: Excuse me. Did you say 15,000?

The Witness: Approximately.

Q. (By Mr. Johnson): Did you have occasion to visit the premises of the Santa Clara River Game Preserve on the next day, the 22nd of October?

A. I did.

Q. At about what time was that?

A. That was between 7:00 and 8:00, I imagine.

Q. You did observe the condition of the premises on that private hunting club on that date and at that time?

A. Well, when I actually went onto the premises to observe, it was later than that.

Q. That is what I am referring to, when you actually entered the premises.

A. That is right.

Q. Did you observe the condition of the premises? A. I did.

Q. Could you tell us what your observations were of the premises of the Santa Clara River hunting club?

A. Well, I entered from the east road, proceeded out the middle dike, and I saw no grain or anything of that nature to speak of until I arrived at dike 4, and from there on, checking back and forth onto the center—off the center dike to the dikes 4, 3, and 2, there was an abundance of barley scattered along the dikes. [246]

Q. How heavily was it scattered?

A. Well, I could have reached down most any

(Testimony of R. E. Bedwell.)

place in the pickle weed and picked up a handful of it very easily.

Q. Was there any along the middle dike?

A. Yes, there was.

Q. How far along the middle dike?

A. Well, out to about as far over to the west as I went.

Q. How far was that?

A. Which was approximately dike 2.

Q. Go ahead.

A. And out to dike 4. In fact, I didn't see any grain or beans or anything else in the way of feed from dike 5 on out.

Q. From dike 5 on south to the road?

A. That's right.

Q. Now, what else did you observe with regard to conditions of the premises?

A. Well, there was on the south dike, approximately the intersection of dike 2, scattered along the road there——

Q. Which way?

A. Well, from that turn out to the east. There was, well, I used the word paved with lima beans because they were so thick that the sun actually shined when it hit the beans.

Q. Excuse me. Was there any barley in that particular [247] area?

A. Very little barley in the beans, excepting around—I didn't pay much attention—approximately between dikes 2 and 3, or possibly between 3 and 4, where there was an overlap between the



(Testimony of R. E. Bedwell.)

barley and the beans. There was a mixture there.

Q. Could you compare the condition of the south dike road, which you have just discussed, with the portions of the club north of that, which you previously described? Which was heavier or lighter?

A. Well, I would say that in comparison the pickle weed and all on the dikes, the grain was actually heavier on the middle dike than it was most of the places along the south dike road.

Q. You are referring to the barley?

A. That's right, the barley.

Q. Now, Mr. Bedwell, showing you Government's Exhibit, or photograph from Government's Exhibits 2 through 9, inclusive, will you please examine those closely, take your time, and tell the court and jury if those scenes in those photographs substantially depict the conditions of the premises as you observed them on the date and under the circumstances to which you have testified? [248]

\* \* \*

The Witness: That is right.

Q. (By Mr. Johnson): What is your answer to that?

A. That is right, they are the same.

Q. Showing you Government's Exhibit No. 1 in evidence, can you tell us with relation to that photograph, which is the exhibit, where you were when you made your observation from way off, as you testified, on the previous day?

A. Well, on the previous day, we come out this

(Testimony of R. E. Bedwell.)

north road here, there is a fence line between that and the property, and we parked on over to where this ditch line here and this corner of this pepper field come together. It is off the picture.

Q. That is when you observed the 15,000 ducks, as you testified?

A. That is right. As the hunters came down from this angle here to the west to the ponds and the birds got up and came out over us toward the grass lake and the ocean.

Q. That is the northwest corner then, is it?

A. That is right. [249]

Q. On this date, October 22, when you entered the premises of the private hunting club, did you have any conversation with any hunter?

A. The only conversation that I had with any hunter was Mr. Carty as he came out off the middle dike to the east road with four other hunters, but I had no conversation direct with them.

Q. That was as you entered the premises?

A. That is right.

Q. Will you relate that conversation to the court and jury, please?

A. As Warden John Bedwell and Warden Edgerton and myself got out of the car, Mr. Carty and four other hunters came off of the middle dike and were just within a couple or three steps of the fence. Mr. Carty says, he spoke first, and he said, "Well, Ernie, it looks as though we are honored by having the entire patrol force here."

I said, "Not quite."

(Testimony of R. E. Bedwell.)

He said, "Well," he said, "It looks as though there is no better time than the present to find out the legality of this feeding in court."

I said, "That is about right."

He said, "Now, Ernie, if you want to be technical," he said, "You could pick up every club in the valley."

I said, "Ed, are you inferring that this is technical?" [250] To which he did not answer.

Q. Did you have any further conversation with him? A. Not direct, no.

Q. Or with any other defendant?

A. No, any more than after Mr. Edgerton, Warden Edgerton went around and contacted Agents Elder and Spicer, he came back and he stated that we were to confiscate the birds, and I told them all collectively that I was sorry, that their birds would have to be confiscated and that they would be given notice when to appear in United States District Court.

Q. Referring to this grain, the barley you saw on the premises, what was its state, as best you can recollect, the state of freshness?

A. Perfectly dry. It was pretty hard for me to state and, in fact, I would not state as to just when it was put out. It was perfectly dry. It was not puffed grain, or anything like that.

Q. Was it any particular kind of barley?

A. It was threshed barley, clean barley.

Q. Handing you an object marked Government's Exhibit No. 14 in evidence, would you say that is



(Testimony of R. E. Bedwell.)

a fair sample of the barley and lima beans which you observed on the premises on that day?

A. Yes. I was present when this was scooped up by [251] Agent Elder.

Q. Did you see him take other samples, too?

A. I did. That was the second sample that was taken. The first one was taken—he had an aluminum cup and he scooped up the sample in the cup.

Q. Would that be this particular cup, Government's Exhibit No. 12?

A. That's right. That was the first one I saw him take.

Q. Mr. Bedwell, you say you have been a warden for how long now?

A. Since the 7th of July, 1927.

Q. That is 23 years, isn't it?

A. That is right.

Q. In your experience as a game warden, have you learned or do you know whether ducks will eat lima beans?

A. I haven't actually seen the birds pick up lima beans, but I know that it has been put out from my own knowledge. It has been put out by various clubs as feed along with barley. I see it stacked in there, piled in the feed along with the barley.

Q. What is your experience or what is your knowledge with regard to the feeding habits of ducks, if you have any?

A. Ducks, in my experience, will pick up any feed regardless of whether it is lima beans or, I would say, any [252] other type of bean that is

(Testimony of R. E. Bedwell.)

in the immediate area at the time, if they are hungry. The same as wild pigeons will clean up tione berries and the next day come down and feed off of the buds on walnut trees.

Q. What about geese?

A. They would be in the same category.

### Cross-Examination

By Mr. Irwin:

Q. Mr. Bedwell, when you were at the area first on October 21, as you have testified, how long prior to October 21 had it been that you were in the vicinity of the Santa Clara Game Preserve?

A. I would say a year previous.

Q. You hadn't been there at all?

A. I had not. That was not my assigned district.

Q. Did you not issue a statement to the Santa Barbara Free Press stating that you had had the club under observation for some time?

A. I did not. [253]

\* \* \*

Q. (By Mr. Irwin): After October 22, did you talk to any representatives of the press?

A. After the 22nd, the News Press called me. That was not on the 22nd, though. That was the 23rd.

Q. I said after the 22nd.

A. That is right. Pardon me.

(Testimony of R. E. Bedwell.)

Mr. Irwin: I ask to have this marked for identification.

The Clerk: Defendants' Exhibit C for identification.

(The document referred to was marked Defendants' Exhibit C for identification.)

Q. (By Mr. Irwin): I show you Defendants' Exhibit C for identification. I will not read it in its entirety, because it is not proper until it has been admitted, but I shall direct your attention specifically to the first sentence of the second paragraph and ask you to read that. You are R. E. Bedwell? A. That is right.

Q. Having read that, does that refresh your recollection [254] as to whether or not you stated to any representative of the press that you had had the club under observation for sometime?

A. I have never made the statement to them that I have had the club under observation. I made the statement to them——

Q. Let's not quibble about it.

A. ——to them that the club that the club had been under observation and had been warned a year before. That is the only statement that I made to them.

Q. The club had been under observation by whom? You say you weren't there prior to the 21st. A. I didn't say by whom.

Q. Who had had it under observation?



(Testimony of R. E. Bedwell.)

A. I know and I understand it had been under observation by Agent Elder. [255]

\* \* \*

### EDMUND WHITE

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. White, where do you reside?

A. I am caretaker on Casper Road, Ventura County Game Preserve.

Q. Is the Ventura County Game Preserve a private hunting club?      A. Yes, sir.

Q. You are caretaker for it?      A. Yes, sir.

Q. That is your occupation, is caretaker for the Ventura County Game Preserve?

A. Yes, sir. [256]

Q. How long have you been in that capacity? How long have you worked in that type of job?

A. Ten years.

Q. For 10 years. During that time, have you had opportunity to observe the feeding habits of various waterfowl, ducks, geese, etc.?      A. I have.

Q. Are you familiar with the feeding habits, specifically, of ducks, then?

A. Well, I believe so.

Q. Will ducks eat lima beans?      A. Yes.

Q. Have you fed them lima beans?

(Testimony of Edmund White.)

A. Yes.

Q. Do they take it? A. They do.

Q. Where did you feed lima beans to them?

A. Well, we got a road that runs down the middle of our duck club.

Q. What is your duck club again?

A. Ventura County Game Preserve.

Q. Where is that located, near what town?

A. Oxnard.

Q. Do you know where the Santa Clara River Game Preserve is? [257]

A. Yes, I have an idea where it is.

Q. Do you know how far your club is from there? A. No, not approximately.

Q. They are both near Oxnard, is that correct?

A. That is right.

Q. What about geese? Will geese eat lima beans, too? A. I guess they would.

Q. Pardon me? A. I think so.

\* \* \*

Q. (By Mr. Johnson): Have you ever fed them lima beans? A. No, not directly.

Q. What about barley? Will ducks and geese eat barley? A. Yes.

### Cross-Examination

By Mr. Irwin:

Q. I didn't quite catch your answer, Mr. White. Was your answer generally that ducks will eat lima beans? A. Yes.

(Testimony of Edmund White.)

Q. Will all ducks eat lima beans at any time?

A. All but the large——

Mr. Johnson: Well, your Honor, that is a very speculative question. Who knows whether a duck is hungry or not? Only a duck knows that.

Mr. Irwin: Counsel is being facetious.

Mr. Johnson: I am not being facetious. I think it is an exceedingly speculative and vague question. I object on that ground, your Honor.

The Court: The objection is overruled. Read the question again.

The Witness: I don't know about the small species of ducks.

Q. (By Mr. Irwin): You don't know about what? A. The small species of ducks.

Q. What I am getting at is this. There are lima beans and lima beans, are there not? There are large lima beans or cull lima beans, different kinds of lima beans? A. That is right.

Q. There are lima beans when they are drying and there are lima beans when they are wet?

A. That's right.

Q. And lima beans when they are deteriorating and turning into fertilizer, so that when I said under what circumstances or what conditions, I will now break it down. Is [259] it your experience that ducks, exclusive of mallards, will eat dry lima bean hulls, such as we have here in Government's Exhibit 12 in that condition?

A. When a bean stays out on the levee for 24



(Testimony of Edmund White.)

hours in the fog and the dampness from the ponds, it has a tendency to swell up.

\* \* \*

Q. (By Mr. Irwin): I am taking one, two, three, four samples from Government's Exhibit 12. Those are beans, aren't they? A. Yes.

Q. Are they swollen up?

A. No, they are dry. [260]

\* \* \*

Q. So that I am asking you, or I did ask you before, and you gave us your elaboration about beans swelling up in 24 hours; in your experience will ducks eat these dried beans that are not swollen up? A. Yes. [261]

\* \* \*

### DELL A. REEDER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. Reeder, where do you reside?

A. I live in Ventura, about three miles east.

Q. What is your occupation?

A. Well, right now, I am rated as a superintendent.

Q. Could you speak a little louder?

(Testimony of Dell A. Reeder.)

A. My rating now is superintendent.

Q. Of what? A. Of a club.

Q. What kind of a club?

A. Well, the Old Adobe Club. That is a duck club.

Q. A private hunting club?

A. That is right.

Q. Located near Ventura?

A. That is right.

Q. How long have you been in the occupation of being caretaker there for that hunting club?

A. Oh, all told, about 26, 27 years. [262]

Q. Where has this particular work been, what county or state? A. Ventura County.

Q. All that time? A. That's right.

Q. You have a lot of lima beans up in Ventura County? A. Yes, we do.

Q. Have you, during your experience, had the opportunity to observe the feeding habits of migratory waterfowl, such as ducks and geese?

A. I have the variety we get in that locality only.

Q. That is what I am asking you. Can you tell from your experience whether ducks will eat lima beans? A. Yes, they will.

Q. Have you fed them lima beans?

A. Yes, I have.

Q. Will they eat barley?

A. Yes, they will.

Q. Have you fed them barley?

(Testimony of Dell A. Reeder.)

A. Yes, I have fed them barley.

\* \* \*

Cross-Examination

By Mr. Irwin:

Q. Mr. Reeder, is there any difference in the condition [263] of lima beans before ducks will take them?

A. Yes, there is. The difference depends on the size of the beans or whether the hull is on it.

Q. Does it make any difference whether they are dry or moist?

A. No. If a bean is small enough, a duck will eat it at any time.

Q. When you say "a duck," there are different species of ducks, a sprig, and so on, mallards. Is there any difference in your experience between them? For example, do you want us to understand in your opinion all ducks will eat lima beans as a natural food?

A. Well, no, I wouldn't say that. When I am speaking of feeding lima beans, about the only birds I have ever noticed that really come in for feed would be the bigger class of birds, and the sprig, mostly.

Q. The sprig mostly?

A. That's right, in our neighborhood.

Q. Whereabouts in Ventura County are you? How far are you from Oxnard, your club?

A. Well, it would be about nine miles; right straight across, it would be six.



(Testimony of Dell A. Reeder.)

Q. Mr. Reeder, you know Mr. Maxwell here?

A. Yes, I do.

Q. Did you have a conversation with him this morning [264] out in the hall?

A. Yes, I did.

Q. Is it a fact that you told him at that time you had never seen any ducks but a mallard take a lima bean?

A. I told him I had never found any duck with lima beans in but a mallard.

Q. But a mallard?                      A. That's right. [265]

\* \* \*

### JESSE F. THOMPSON

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Will you state your name again?

A. Jesse F. Thompson.

Q. What is your occupation?

A. I am chief of the branch of Game Management for the U. S. Fish and Wildlife Service.

Q. Where is your office?

A. Washington, D. C., Department of Interior Building.

Q. How did you happen to be in Los Angeles?

A. A regular tour of duty from Alaska and down the Pacific Coast.

(Testimony of Jesse F. Thompson.)

Q. In other words, you just happened to be passing through?

A. Yes, and to attend the North American Wildlife Conference this coming week in San Francisco. [266]

Q. What are your duties in this position you have just described?

A. The chief duties of the branch of Game Management are enforcement of the federal game and fish laws and control of depredation of migratory birds to agricultural crops.

Q. In that capacity, you are responsible for carrying out the regulations concerning migratory waterfowl?

A. Yes, I am.

Q. How long have you been in this type of work, Mr. Thompson?

A. Since 1929 with the government, and under civil service since 1935.

Q. Are you familiar with the feeding habits of migratory waterfowl, including ducks and geese?

A. Yes, I am.

Q. Could you give us a general statement on the feeding habits of ducks?

Mr. Irwin: Just a moment. May I ask one question on voir dire?

The Court: Yes.

Mr. Irwin: It is true that the ducks and waterfowl will vary in different localities in the country, isn't it?

The Witness: That is correct. [267]

(Testimony of Jesse F. Thompson.)

The Court: I think a general foundation should be laid of the knowledge of this witness as to California ducks or, let us say, Pacific Coast ducks.

Q. (By Mr. Johnson): Are you familiar with the habits of the ducks which are in the flyways along the Pacific Coast area?

A. Oh, I have been in the Sacramento Valley and in Oregon where there are concentration centers of waterfowl.

Q. Are you familiar with the Oxnard-Ventura area? A. No, I am not.

Q. Are you familiar with the type of ducks that inhabit that area? A. Yes, I am.

Q. What kind of ducks do inhabit that area?

Mr. Irwin: I object to that as hearsay and calling for a conclusion of the witness. He said he is not familiar with the area, so how can he be familiar with the waterfowl? [268]

The Court: The objection is overruled.

\* \* \*

Q. (By Mr. Johnson): Have you been, in your position, responsible for the receiving and examining of reports from these various areas throughout the country? A. Yes, I have.

Q. Would they include the Oxnard-Ventura area? A. I don't recall any from there.

Q. Getting back to your knowledge of feeding habits, could you tell us the feeding habits of ducks that haunt the Pacific Coast flyways, the migratory birds?

A. Well, they will differ considerably, because



(Testimony of Jesse F. Thompson.)

no one is quite sure where the ducks come from, that is, all of the ducks that visit the Pacific flyways. Some come from Canada, some from the Dakotas, and some from Alaska, so it [269] would have to be a general knowledge, if it included all the ducks that visit the Pacific flyways.

Q. Do they eat specific things and specific things only, no matter where they fly? Do they always look for barley or always look for something else?

A. No, I wouldn't say that. Generally, they eat the grains common to the area they are concentrated in.

Q. Do they eat grain?

A. Well, grain and whatever type food the ducks take.

Q. Will you say a duck will take and eat the particular vegetable or grain that is prevalent in a particular area, if he is hungry?

A. Generally that is true. I wouldn't say they would eat all the types of grain in a community.

Q. What about geese, are their habits very much the same?

A. Very much the same. They differ in a few respects, not many.

Q. Could you amplify your statement a little more about the feeding habits?

A. Generally, all over the country?

Q. In the Pacific Coast flyways.

A. We have the rice area in Sacramento, at which the ducks feed to a considerable extent. We

(Testimony of Jesse F. Thompson.)

have quite a problem in keeping them out of the fields in the lower Klamath area. [270] They eat barley and grain of that nature when no rice is grown.

Q. If ducks were in a lima bean area, would they eat lima beans, if they were hungry?

A. I am not so sure whether they would eat them or not. Perhaps they would. [271]

\* \* \*

Mr. Johnson: We expected two witnesses here at 11:00 and they would be very brief, but they have not arrived. [272]

The Court: You just offer to present them in rebuttal and at that time we will decide the situation.

Mr. Irwin: While we are here, if with that statement you are going to rest, then I would like to make a brief observation. Are you going to rest?

Mr. Johnson: Yes.

Mr. Irwin: Then, your Honor, for the Record, I am not satisfied on the interpretation since we have had the new rules. Formerly, the rule was to make a motion to dismiss at the end of the plaintiff's case in order to entitle you to make one at the close of the evidence. I am going to concede the one I am making right now the Court should deny, but in order to protect my record, I will make it at this time.

The Court: The record can show the motion has been made and denied. [274]

\* \* \*

EDWARD C. MAXWELL

one of the defendants herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Irwin:

Q. Mr. Maxwell, where do you reside, sir?

A. I reside in Ventura County, California.

Q. You are an attorney, sir? A. Yes, sir.

Q. Have you held any official position, any federal position, at any time?

A. I am past U.S. Commissioner for this district.

Q. How long have you resided in Oxnard?

A. I resided in Oxnard since 1931.

Q. Have you held any other positions? I refer now, first, with reference to the County Bar of Ventura.

A. In 1936, I was president of the County Bar of Ventura County.

Q. During the war, did you hold any other position with the Federal Government? [280]

A. I served on the Draft Board, Oxnard Draft Board.

Q. We have heard a good deal about this Santa Clara Gun Club. First, you are a member of the Santa Clara Gun Club? A. Yes, I am.

Q. Of what does the Santa Clara Gun Club consist numerically?

A. It has or had this past year nine members. The first part of 1949, it had about 14 or 15, all but approximately four being relatives of the McGrath



(Testimony of Edward C. Maxwell.)

family and McCormick family and the Doud family.

Q. Approximately what acreage is involved in the Santa Clara club?

A. I am not able to say accurately. We have already referred to it as approximately 40 acres.

Q. Do you have any club house facilities, or anything like that?

A. No, we do not. We have an old cook wagon from a threshing machine that we have the numbers of our blinds in, and we come in there in the morning and make our draws to go out to the club, but that is all the improvements, besides a little house we bought for utility purposes, which we have never used this year at all.

Q. As a matter of fact, this so-called gun club is also part of a farm, a ranch, there? [281]

A. That is correct. It is situated in the middle of an acreage that is owned by a corporation.

Q. I show you Defendant's Exhibit A and ask you if that depicts the Santa Clara Gun Club, what we call the acreage that is used by the gun club?

A. Yes, it does, substantially.

Q. That is a picture of the——

A. A little bit of it is not there, but most of it is.

Q. That is a picture you caused to be taken from the air?      A. That is correct.

Q. As the approach of the 1949 hunting season was climaxing, did you, on behalf of the club, take any steps to contact any game wardens to find out what were the conditions under which you could shoot this year?

(Testimony of Edward C. Maxwell.)

A. No, I did not take any steps myself. Warden Edgerton called me somewhere around three weeks before the season, it might have been the 8th as he testified, and I had a conversation with him then about the regulations.

Q. Will you tell us what that conversation was, please?

A. He called me first and wanted to know the names of the officers of the Santa Clara River Game Club, and I told him that the president was Mr. Eugene Doud, the vice president [282] was Mr. Robert Maulhardt, and I was secretary and treasurer.

He stated to me that he was checking all the clubs to find out who the proper officers were.

Then I asked him if there had been any change in the feeding regulations. He stated to me, not to his knowledge.

I said, "Well, I understood from a conversation I had with Inspector Earl Macklin around January of the same year, 1949, that the regulations had been changed so that clubs were permitted to feed up to 72 hours before shooting.

He said he hadn't heard of any such regulations, and he said, "Wait a minute and let me get it."

So I held on the phone and he came back and said, "Well, I don't find the regulations right now but, anyway, I don't think there is anything like that in the regulations."

I said, "Well, would you mind calling Earl Macklin and asking him if the regulations had been changed?"

(Testimony of Edward C. Maxwell.)

He said, "Well, I will call Warden Elder—Agent Elder."

I said, "Well, I talked to Macklin. Will you call Earl Macklin?"

He said, "Yes, I will."

I said, "Will you let me know if there has been any change in the regulations?"

He said, "Yes, I will."

I don't know whether he said after that or just previous [283] to that time, but he said, "We have told the two big clubs"—by that he meant the Point Magu and Ventura County Game Preserve clubs—"that they were to quit feeding 10 days before the season. We told them that this year and we told them that last year."

So I said, "Well, I would appreciate it if you would let me know," and that was about the substance of the conversation.

Q. By the way, who were the officers of the gun club at the time that Mr. Edgerton called you?

A. Mr. Eugene Doud was president, Mr. Robert Maulhardt was vice president, and I was secretary and treasurer.

Q. Did you hear again from Mr. Edgerton?

A. No, I did not hear again from Mr. Edgerton.

Q. You, of course, know Mr. James McCormick, who likewise is here with you as a defendant?

A. Yes.

Q. I direct your attention first to Government's Exhibit 15, which is a letter dated January 14, 1949, addressed to Mr. James McCormick, and bears a



(Testimony of Edward C. Maxwell.)

typewritten signature, A. W. Elder, U. S. Game Management Agent. I will ask you to look that letter over, and I will ask you if Mr. McCormick showed you the original of that letter.

A. Yes, I saw the original of that letter.

Q. Did you assist Mr. McCormick in preparing a reply [284] to that letter?      A. I did.

Q. I show you Defendant's Exhibit B in evidence, which is a typewritten letter dated January 19, 1949, addressed to Mr. A. W. Elder, signed by James McCormick, and ask you to examine that letter and see whether or not that is the letter you assisted Mr. McCormick in composing in reply to Government's Exhibit 15, the first letter to which I directed your attention.

A. Yes, that is the reply. I dictated it.

Q. Having in mind that reply is dated January 19, 1949, did you ever hear, either by phone or letter, or any other means of communication, from Mr. Elder, between the date of this letter, January 19, 1949, and the date of October 22, when you saw Mr. Elder on the preserves of the Santa Clara Gun Club?      A. No.

Mr. Irwin: All right. First, ladies and gentlemen of the jury, you recall there was identified as a copy, and admitted by me to be a copy, of an original letter sent by Mr. Elder to Mr. James McCormick on January 14, 1949, and the [285] next document I will read is the reply which Mr. Maxwell has just stated he dictated, and it went out over Mr. McCormick's signature.

(Testimony of Edward C. Maxwell.)

“United States Department of the Interior

“Fish and Wildlife Service

“1503 Federal Bldg.

“Los Angeles 12, California.

“14 Jan. 49

“Mr. James McCormick

“Ditch Road Ranch

“Oxnard, California

“Dear Mr. McCormick:

“A few days ago in a telephone conversation with Mr. Edwin L. Carty, I was given your name as the one to contact as to the facts of the recent baiting of the Santa Clara River Game Preserve. Please accept my apologies if I have your name misspelled as I neglected to have Mr. Carty spell it out for me.

“Mr. Carty advised me that you had been told that it was permissible to bait the gun club during the closed season and up to 72 hours before shooting on the club. He also advised that this information was given to you by a deputy United States Game Warden. Mr. Carty is well known to me and I consider him a very fine person and I, acting upon his information that you had been misinformed, advised him (Mr. Carty) that it would be OK to shoot the last of the season. [286]

“I have been ordered by my Regional Office to get to the bottom of this and I am at this time asking you for your version of the reason bait was so placed in the ponds and dikes of the Santa Clara River Game Preserve.

(Testimony of Edward C. Maxwell.)

“Yours and Mr. Carty’s cooperation in this matter is greatly appreciated and I assure you that any help you can give me will be treated as confidential.

“Very truly yours, A. W. Elder, U. S. Game Management Agent.”

\* \* \*

Q. Mr. Maxwell, I am going to ask you to read the reply.

A. This letter is dated January 19, 1949, at Oxnard, California.

“Mr. A. Elder

“U. S. Game Management Agent

“U. S. Fish and Wildlife Service

“1503 Federal Bldg.

“Los Angeles 12, California

“Dear Mr. Elder:

“Thank you for your letter of January 14th, relative to the Santa Clara River Game Preserve.”

“Due to the fact that there are a number of things I would like to discuss with you relative to the past and proposed [287] operation of the group, I would prefer to confer with you personally, rather than by mail.

“With this in mind if you intend to come through Oxnard in the near future and would let me know, I would appreciate it or if you would prefer that I come to Los Angeles and see you I would be very glad to do so at your convenience.

“Assuring you of my appreciation of your cooperation and trusting that I will hear from you in the near future, I remain,

“Very truly yours, (signed) James McCormick.”



(Testimony of Edward C. Maxwell.)

Q. Thank you. Now, referring again to this first paragraph of Government's Exhibit 15, wherein the writer states that Mr. McCormick's name was given to him as the one to contact regarding the facts of the recent baiting of the Santa Clara River Game Preserve, would you please tell the jury just what the facts were that gave rise to this correspondence?

\* \* \*

The Witness: It came out and I did not mean to say it. The only fact that is within my knowledge is that our club did not shoot for two or three shooting days of the second half of the 1948-1949 duck season.

Q. (By Mr. Irwin): Very well. I will go into the rest of this with some of the others, then. Coming back again to the conversation which you had with Mr. Edgerton, I believe you stated you did not hear from him again. A. That is correct.

Q. And you placed that about three weeks before the season opened? A. That is correct.

Q. Now, then, not hearing from him, did you have any contact with Mr. Jack White?

A. Yes, I did.

Q. Who is he, to your knowledge?

A. Jack White is the County Game Warden of Ventura County, and was in 1949.

Q. Do you know that he is also a deputy federal game warden?

A. I don't know that of my own knowledge.

Q. Did you have any contact with him before the last season opened on October 20, 1949? [289]

(Testimony of Edward C. Maxwell.)

A. Yes.

Q. How long before?

A. The Monday before the season opened on the following Friday. That was about the 17th of October, 1949.

Q. Did that conversation have anything to do with conditions as they then might exist at the Santa Clara Game Club?      A. Yes, it did.

Q. Did you make any request of Mr. White with reference to advising you as to what the conditions were at the Santa Clara Game Preserve?

A. I did.

Q. As a result of that request, did you make an appointment for him with Mr. McCormick?

A. Yes, I made an appointment with Mr. White and called Mr. McCormick to meet Mr. White in my office.

Q. Did they meet in your office?

A. They did.

Q. Then did Mr. McCormick and Mr. White leave your office?      A. They did.

Q. Do you know where they went?

A. I instructed them to go out to the Santa Clara River Game Preserve and check the club.

Q. When you say "instructed," you mean requested? [290]      A. I requested them.

Q. Did you get a report after they had been out?

A. I did. Mr. White came back to my office and stated they had been out to the club and that Mr. McCormick had advised him that the last grain had been put on the club on the 13th of October. He

(Testimony of Edward C. Maxwell.)

told me he had a conversation with Mr. Spicer and that Mr. Spicer had advised him that there had been no change——

\* \* \*

A. Where did I leave off with my answer?

(The record was read by the reporter.) [291]

A. ——in the regulations, that the clubs were instructed to quit feeding 10 days before the shooting season started in October, 1949.

Mr. White told me that he understood, in a former conversation with Mr. Macklin, that such was not the case, but because of the confusion, I had better see Mr. Macklin myself.

Q. Did he say anything to you about whether he himself had found feed on his trip to the game preserve?

A. Yes. He said he thought the amount of feed on the club was not unreasonable and would, in his opinion, be cleaned up by the time the shooting season started.

Q. In response to his recommendation, not having heard from Mr. Edgerton, did you then contact Mr. Macklin? A. Yes.

Q. Who is Mr. Macklin again, for the benefit of the jury? A. He is inspector Earl Macklin.

Q. Where does he have his office?

A. In the California State Building.

Q. He is the inspector in charge, is he not, for the State of California in the Southern California area?



(Testimony of Edward C. Maxwell.)

A. That is my understanding. In fact, Mr. Macklin is sitting back there in the audience.

Q. If I haven't properly identified his title, I am [292] sure he will correct me. When was it you called on him with reference to the opening of the season?

A. The season opened on Friday noon, the 21st of October. I called in Mr. Macklin's office at or about 11:00 o'clock, on the 19th of October.

Q. Did you have a conversation with Mr. Macklin?      A. Yes, I did, in his office.

Q. Was anyone else present?

A. No, there was not.

Q. What was that conversation? I take it it had to do again with what the regulations were with reference to the duck season and your preserve, of which you were a member.      A. That is right.

Q. Will you please give us that conversation?

A. After the usual greetings, because I have been acquainted with Mr. —or Inspector Macklin—for some years, he asked me to be seated, and I sat right across from his desk. He was talking on the telephone, and then hung up.

I asked him what were the present feeding regulations for duck feeding. My reason for asking that was that I was attempting to find out if the 72-hour statement that I understood him to make when I talked to him in January, 1949, was in truth correct.

He said, "Well, Mr. Carty and I were at a Fish Commission meeting, Fish and Game Commission-

(Testimony of Edward C. Maxwell.)

ers.” I believe he [293] said it was at San Francisco, but it could have been Sacramento. He said Mr. Carty asked for an opinion of the Attorney-General, and after they recessed for lunch, the Attorney-General came in after lunch and gave the opinion that feeding of ducks on duck clubs could be done up to a reasonable time before shooting occurred on the opening day of the season.

He said that the Attorney-General also stated that by “reasonable time,” that was the time sufficient to permit the ducks to clean up the feed.

I said, “Well, I understood that there was some 72-hour regulation. You referred to it, I think, in a former conversation I had with you last spring.”

He said, “Well, that is a sort of a misconception. It is probably part Jack White’s fault and partly my fault. Last year, before the season opened, Jack White called me, and he wanted to know what the regulation was, and I repeated to him the opinion that we had heard given us at this Fish and Game Commissioners meeting by the Attorney-General of the State of California, and he said, ‘Well, what do you call reasonable?’ and I told Jack White that it could be 72—or Jack White said, ‘Would 72 hours be reasonable?’ and I said, ‘Yes, or 84. Anything that is reasonable in time so that the feed can be cleaned up.’ ”

Then I said to him, “I am a little bit worried about [294] John Spicer. He worries me. He is not friendly. I wish there was some way we could get him acquainted with us and get his cooperation.”

(Testimony of Edward C. Maxwell.)

He said, "Well, I had John Spicer in the office this week serving warrants, and I had a talk with him about this feeding situation and I told him that when he went out to examine the marsh, a duck marsh, that if the marsh had been substantially cleaned up, to use his head and be reasonable about it."

My nickname is Hap, and he said, "Hap, I don't mean 20 or 30 sacks of grain laying around."

So I said, "Well, he worries me."

"Well," he said, "I will tell you. I also told him not to do anything without first taking it up with me, that I wanted to know what was going on out there."

I said, "That is good enough for me."

Then I thanked him and left.

Q. Coming to the opening of the season, which was October 20th or October 21st——

A. The 21st.

Q. You did not shoot the Santa Clara Game Preserve on the opening day, did you? A. No.

Q. When had you last been at the club yourself?

A. I believe it was in the summer, some time, perhaps, [295] in August, previous to the opening of the hunting season.

Q. However, on the morning of October 22, you did go to the preserve of the Santa Clara Gun Club?

A. Yes.

Q. You had your hunting license, your duck stamp, and everything, I take it?

A. I had my duck stamp, and I think I had, by



(Testimony of Edward C. Maxwell.)

error, the license from the year before, and Mr. Elder saw it was a mistake, and it was obvious, and he said it was all right.

Q. And you also had a gun?

A. I had my gun, yes.

Q. Will you please tell the jury at what time you arrived there and what you did? Go on, in your own words, and give us the events of that morning, as you remember them.

A. We met at a coffee shop in town and had breakfast. I can't remember the exact hour, but it must have been somewhere around 4:00 to 4:15.

Q. When you say "we," you mean whom?

A. The members of the club all assembled. In fact, I think all but two of the defendants were present that morning.

After breakfast, we got in our cars and left the city of Oxnard and went out on what is known as Gonzales Road to the duck club. [296]

\* \* \*

Mr. Johnson: So stipulated. Your Honor, I have just spoken to counsel for the defense, who has agreed we may call our two witnesses out of order, to whom I referred earlier today.

E. W. HENKE

called as a witness on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Johnson:

Q. Your name is Ed Henke? A. Yes, sir.

Q. Where do you reside?

A. Ventura, California.

Q. Mr. Henke, are you a hunter of migratory waterfowl? A. Yes, sir. [302]

Q. For how many years have you been hunting?

A. Oh, 30 years.

Q. Where have you been hunting them?

A. Mostly in California.

Q. Have you ever hunted up in Ventura County?

A. Yes, I have hunted in Ventura County.

Q. You have killed a lot of birds in your life?

A. Lots of ducks.

Q. Any geese? A. Yes, some geese.

Q. During the course of your experience in such hunting, have you ever had opportunity to observe the feeding habits or the results of the feeding habits of ducks?

A. I have watched them considerably.

Q. Have you ever cut open any of them to see what they have eaten?

A. I have dressed all my own game.

Q. You have observed what is in their stomachs?

A. Yes, sir.

(Testimony of E. W. Henke.)

Q. Have you ever observed whether lima beans have been eaten by ducks?

A. I have seen lots of ducks with lima beans in them.

Q. In their stomachs? A. In their necks.

Q. In their gullets? [303] A. Yes.

Q. What kind of ducks?

A. Mostly mallards and some sprigs, pintail.

Q. What about geese?

A. I have never gotten any geese with lima beans in them.

Q. But from your experience, these birds which you have mentioned, the type which you have mentioned, do eat lima beans?

A. Yes, they do, definitely.

Mr. Johnson: You may cross examine.

### Cross-Examination

By Mr. Irwin:

Q. Where do you live, sir?

A. I live in Ventura, California.

Q. In the city of Ventura? A. Yes.

Q. What is your address?

A. 559 South Evergreen Drive.

Q. What is your business or occupation?

A. My business is gasoline distributor.

Q. What club do you shoot out of?

A. I don't belong to any club or shoot in any club.

Q. When you are speaking of your experience, where do you hunt around Oxnard? [304]

A. I have hunted at the mouth of the Santa



(Testimony of E. W. Henke.)

Clara River and up and down the Santa Clara River, and over at the Point Mazu Club, outside of the club, where they allow the shooters to shoot that don't belong to the club.

Q. Have you ever been a game warden yourself?

A. No, sir.

Q. Are you related to any game wardens in this case?

A. No, sir, no relation. [305]

\* \* \*

Q. Are you acquainted with any of the witnesses for the prosecution in this case? By that, I am referring to Mr. Spicer.

A. I am acquainted with Mr. Spicer, but very casually.

Q. Are you acquainted with either of the Bedwells?

A. I met the younger Mr. Bedwell for the first time today, and I have met his father a year or two back.

Q. How about Mr. Edgerton?

A. I talked to Mr. Edgerton over the phone once.

Q. That is the only way you know them?

A. That is the only contact I have had with them.

Q. You are not related to any of them?

A. No, sir.

Q. How many times did you hunt in the vicinity of the Santa Clara River this last season?

A. Oh, I would say three times.

(Testimony of E. W. Henke.)

Q. What type of ducks did you take?

A. Pintail, teal, and mallards.

Q. Did the pintail or teal that you shot this last season have any lima beans in them?

A. No. I never killed any teal with lima beans.

Q. The other ducks you mentioned was what?

A. Pintail. [307]

Q. Did they have any?

A. Not this season, but last season they did.

Q. By this season, I am referring to the season beginning October 21, 1949. A. Yes.

Q. The mallards you have had, do I understand that they will take them occasionally?

A. Mallards have, yes.

### GEORGE E. GRUELL

called as a witness on behalf of the government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. Gruell, where do you reside?

A. Ventura.

Q. What is your occupation?

A. Professional baseball player and student.

Q. Are you a hunter of migratory waterfowl?

A. Yes, I am. [308]

Q. How long have you been hunting?

A. Oh, approximately seven or eight years.

(Testimony of George E. Gruell.)

Q. Have you killed a lot of ducks and geese in that time?

A. Quite a few ducks and just a few geese.

Q. During the course of your hunting experience, have you had occasion to observe the eating habits or the results of the eating habits of ducks?

A. Yes.

Q. Have you ever cut open any ducks you have shot down?

A. Yes, I have. I clean all my own.

Q. Pardon.

A. I say I clean all my own game, so I do.

Q. From your experience, do you know whether ducks will eat lima beans?

A. Yes, I have observed lima beans in their craw.

Q. Have you found lima beans in ducks you have cut open?      A. Yes, I have.

Q. What about geese?

A. No, I never have.

Q. But you have found lima beans in ducks?

A. Yes.

Q. Ducks you have shot down?      A. Yes.

Q. Whereabouts do you shoot?

A. Santa Clara riverbottom.

Q. What kind of ducks were they?

A. Mallards.

Q. Any other kind?      A. Yes, a few sprigs.

Mr. Johnson: You may cross-examine.



(Testimony of George E. Gruell.)

Cross-Examination

By Mr. Irwin:

Q. How many times were you hunting in the Santa Clara riverbottom last season?

A. Oh, I would say four or five times.

Q. With reference to this last season, and by last season I am referring to the season that commenced October 21, 1949, what kind of ducks did you get from the Santa Clara riverbottom during this last season?

A. I got sprig and spoonbills and a few teal.

Q. How many occasions were you hunting?

A. I said four or five, I believe.

Q. And you got your limit each time?

A. No, I did not.

Q. How many ducks would you say you took during the last season?

A. I would say two limits.

Q. That would be about 10 ducks. How many of those [310] ducks had lima beans in them?

A. None of them. [311]

\* \* \*

EDWARD C. MAXWELL

recalled as a witness, resumed the stand and testified further as follows:

Direct Examination

(Resumed)

By Mr. Irwin:

Q. Let's just get this Exhibit A up here so we won't be talking of things that are too obtuse.

(Testimony of Edward C. Maxwell.)

A. We came from down at the gate. He drove me down over to about this area, somewhere in there. It was dark. I don't remember just exactly the time. I only had a short [313] way to walk over to this levee. From this levee we walked down to the duck blind.

Q. May the record show you have identified what is called dike No. 3, or is that No. 27?

A. On that diagram there, it is the second dike from the west line of the club.

Q. All right. Fine. Go ahead, please.

A. That diagram is the opposite. He has these decoys, and there were two sets of them. He preceded me, because I am a little slow, in walking down the levee there, and in the pitch dark it was hard for me to keep up with him, so he went ahead and left me, and I caught up with him as he was finishing up the decoys, and then we got into the blind.

It was about 5:00 o'clock when we left the cook house. We started to shoot about 5:30 or 5:35 or something like that. We have certain hours at which you start to shoot in the mornings, and that varies each morning as it gets a little lighter, you shoot a little differently. I should say a little darker, with the time.

Then we shot ducks there until we counted our five ducks apiece that we shot down, and then Mr. Robert Doud and myself decided we wanted to be on the safe side of our limits. You are only allowed to shoot five ducks per day under the law, so he went

(Testimony of Edward C. Maxwell.)

out and picked up the ducks. He waded out into the water. I can't wade out in the water. I stayed in the blind. [314] Then he called me and said yes, we had our 10 ducks. So then I got out of the blind.

Q. Was it light by now?

A. It was light by now, yes. He had walked around to pick up the ducks in these two ponds here, which are on either side of the blind I was shooting in with him. As he went, he collected them and put them on the bank and got them together. We have what we call duck straps, and there is room for five ducks on one side, or more. In the old days they held more, because you could get more then.

As he did so, he called to me and said there was somebody out there that was arresting the club, and that he had been arrested.

Then he started up here in the car to pick me up. In the meantime, James McCormick had crossed over from this blind where he was shooting——

Q. Will you pardon me just a minute? What is that?

A. That is the third levee east of the west road of the club. He just waded across the ponds and then he told me he understood from Mr. Carty that they wanted the club to quit shooting, that we were under arrest.

I left and started over here, walking, and Mr. Doud pulled up toward me, but I did not get in the car, as Agent Elder said and Warden Spicer. I walked over to within about 100 feet of Mr. Elder, and he was some place in this area. I [315] don't



(Testimony of Edward C. Maxwell.)

know really where he was. I was not of a frame of mind by that time to pay much attention to location.

I was looking at him and when I got about 100 feet from him, he yelled at me, "You are under arrest for shooting over baited ponds." He was very belligerent in saying so. I walked right up to him. He was standing towards the front of his car.

He said, "What is your name?" I told him my name was Edward C. Maxwell.

He said, "What is your occupation?" I told him I was a lawyer.

Then he said, "What is your address?" I told him my address was 326 South Eighth Street.

I said, "Now, what is your name and what is your occupation?" Because at that time I did not know who he was or what he was, and then he pulled out a card and handed me a card, and on it was his name.

I said, "Well, I don't understand. What is this setup anyway?" I said, "This club was shot on yesterday. The warden was out yesterday."

He said, "You had your warning."

I said, "Who had their warning?"

He said, "I warned Mr. Carty last year." He said, "You have had your warning."

I said, "Well, Mr. Carty isn't an officer of this club. [316] Why didn't you take this up with the club. [316] Why didn't you take this up with the and asked you to either come up and see us or let us come down to see you to talk this over with you."

(Testimony of Edward C. Maxwell.)

He said, "You didn't answer what I said in the letter."

I said, "I know, but it was not through lack of cooperation."

He said, "Well, you had your warning." He kept repeating it and repeating it, and I was getting angrier all the time.

I said, "Why do you think it is a warning to our club when Carty isn't even an officer?"

He said, "He is president."

I said, "No, he is not."

He said, "He was president last year."

I said, "No, he was not president last year or this year. Eugene Doud is president and Robert Maulhardt is vice president and I am secretary and treasurer. Why didn't you get in touch with us?"

He said, "You have had your warning," and that was the end of that.

Then he started quoting from the Migratory Bird Act and handed me a pamphlet, and I said, "I have got several of those."

He said, "There wasn't anything else I could do." He [[317] said, "You can find a handful of grain on the marsh, pick up handful," he said, "of the grain on the marsh."

I said, "With the amount of ducks that are here, how long would a few handful of grain last with all the ducks that are here?"

He said, "I could go around and scoop up three or four boxes full."

He did not say he could go over to the club and

(Testimony of Edward C. Maxwell.)

in lots of places pick up three or four buckets full.

I said to him, "Mr. Elder, how long would it take all the ducks in this duck club today to eat up three or four buckets of grain that you could pick up on this marsh?" He did not answer me.

Then I said, "You know, I am beginning to get an inkling of this case." I said, "This case has a rotten smell to me."

There were four State game wardens and a federal agent to arrest 14 fellows shooting out there on a marsh, and there wasn't any of those men that hadn't lived in Ventura County almost as long as these wardens, or longer than these wardens have been wardens, and many of these wardens know most of the men and myself by our nicknames.

So I said, "This smells rotten," and I was getting very angry, and I said to Agent Elder, "You know, I have always been sympathetic towards an officer enforcing the law in the line of duty, but I hate your guts for the way you are handling [318] this case."

That just about wound up our end of the deal. He asked for my badge and for the stamp, and then he told me—one more thing was said. I said, "Are you going to confiscate the ducks?"

He said, "Well, you know what we are going to do with the ducks. You know the federal law as well as I do." His words struck my sense of humor a little bit and I said, "I am frank to tell you that I have a hard time keeping up with the California law in this state, and I don't know the federal law."



(Testimony of Edward C. Maxwell.)

So I did not know the answer to the question until he called me. Then I left.

All the time this conversation took place, Mr. James Robert Doud stood right there by my side, and some of the time, if not all, Mr. John Spicer was there. He made the remark that there was nothing said by him to me, but Mr. John Spicer walked up to me after Mr. Elder had accosted me and said, "Well, well, imagine seeing Hap Maxwell here," and shook hands.

Q. Now, Mr. Maxwell, pursuant to my request, did you make certain experiments with spreading grain on the water of the ponds of the Santa Clara Game Club and then thereafter take pictures?

A. I did. [319]

Q. When was that experiment made?

A. That experiment was made last Saturday afternoon at approximately 2:00 o'clock.

Q. Who was with you when the experiment was made?

A. A photographer by the name of Phil Livingstone and Mr. Vincent Doud, one of the defendants.

Q. The photographer is a professional photographer?

A. That is correct.

Q. Where was the experiment made?

A. It was made on the corner of one of the ponds of the duck marsh that still had water in it. It was made on this marsh right there, the most westerly pond, northerly pond west of the west line and north of the center, so-called center road.

Q. By the way, before I forget it, on this morn-

(Testimony of Edward C. Maxwell.)

ing of October 22, going back a second, where were the ducks congregated, if any place, what part of the marsh?

A. Why, you mean when we first went on?

Q. That's right.

A. I have no idea. It was pitch dark.

Q. Did you notice any ducks seated on the dike or the levee there that morning?

A. No. It was pitch dark when we went out there, and when they start to shoot, they raise up in flight.

Mr. Irwin: Will you mark this for identification, please? [320]

Well, will you mark all of these as they are in sequence, please?

The Clerk: Defendant's Exhibits D, E, F, and G for identification.

Q. (By Mr. Irwin): This experiment you conducted, was that conducted with grain?

A. It was conducted with the identical type of grain placed on the marsh by the club. It was the same grain taken out of about 45 pounds that remained unused after the duck season was over.

Q. As secretary and treasurer of the club, do you know how much grain was purchased prior to the opening of the season for use on the game preserve?

A. There was 80 sacks, according to the invoice. I did not see the sacks.

Q. You had nothing to do with when it was spread or the division of it, so I will have to get

(Testimony of Edward C. Maxwell.)

that from Mr. McCormick, but it was left over, was it, about 45 pounds in one sack, with which you made the experiment to which I am about to direct your attention?           A. That is right.

Q. Now, I show you Defendant's Exhibit D for identification and ask you what that is, and if you know whose hand that is appearing over that bucket.

A. Yes. That is a portion of a bucketful of the [321] grain that we took out of the sack I just referred to, and that is my left hand in which the grain reposes, and my right hand is balancing the bucket.

Q. Now, then, I show you Defendant's Exhibit E for identification and ask you to tell me what that represents.

A. Yes. I stood almost where this picture is centered, not quite, but almost, and took from the bucket that you see in this picture, or Exhibit E, the same one you referred to, Exhibit E, I took 18 handfuls of grain and threw them in the corner there at the edge of the water, and that is the grain that you see in the bottom of the water, and the top is just the waste, there was wild celery seed, and the top is not all grain, and along the edge of the water isn't grain, either.

Q. You were right there and watched the effects of your first scattering these 18 handfuls of grain, and then you directed this picture be taken as the result?           A. Yes.



(Testimony of Edward C. Maxwell.)

Q. That picture was taken about how long after you scattered the grain?

A. I would say not over a minute or two.

Q. Who is this gentleman that appears with the bucket in his hand?

A. That is Mr. Vincent Doud, one of the defendants.

Q. Now, then, I show you Defendant's Exhibit F for [322] identification and ask you was that taken at approximately the same time and place?

A. Yes.

Q. Do you know what that represents?

A. Yes. That represents a picture of the grain thrown on the water, two handful, by Mr. Vincent Doud. That was taken, however, at a different place than the grain that I threw in the water there in Exhibit E. It was taken across on the first levee east of the west road, about 25 or 30 feet north of the middle road.

Q. I show you Defendant's Exhibit G for identification and ask you if you will tell us what that shows.

A. That is a picture of four handful of grain taken approximately a minute after it hit the water. That was put in there by Mr. Vincent Doud, one of the defendants. [323]

\* \* \*

(The photographs referred to were received in evidence and marked Defendant's Exhibits D, E, F, & G.)

Q. Exhibit E was how many handful?

(Testimony of Edward C. Maxwell.)

A. 18 handful placed there by me.

Q. And Exhibit F?

A. Exhibit F was two handful placed by Mr. Vincent Doud, and Exhibit G was the four handful. [334]

\* \* \*

### Cross-Examination

By Mr. Johnson:

Q. You testified that the acreage of the Santa Clara Game Preserve, the Santa Clara River Game Preserve, is a total of 40 acres. You don't mean to say that the area depicted in that diagram amounts to 40 acres, do you?

A. I don't believe it does, no.

Q. Approximately how many acres are contained in the area in which the ponds are located?

A. I don't know, but I would imagine, or my best judgment would be somewhere around 20, something like that, more or less.

Q. Referring to your conversation with Mr. Earl Macklin which, according to your testimony on direct examination, took place on the 20th of October, would you state that Mr. Macklin told you that all grain must be cleared up before you start shooting, no matter when it is put out?

The Witness: Could I have that question read to me, please?

(Question read by reporter.)

A. He stated that the Attorney-General had given an opinion that the grain should be cleaned up. [342]

(Testimony of Edward C. Maxwell.)

Q. He did tell you that, did he not, that no matter when you put it out, whether it was 72 hours, 84 hours, or even 10 hours, it had to be cleaned up before the hunting season opened and you started shooting?

A. I don't recall that he made that statement. He made the statement to me that he had talked to John Spicer and told him to use his good judgment, and if the grain was sufficiently cleaned up, to use his good judgment in that respect.

Q. Is it your testimony then that Mr. Macklin did not himself personally tell you directly that all grain and all other feed put out on the premises of your club must be cleaned up before you started shooting; is that your testimony?

A. I don't remember him saying that.

Q. I think you testified, too, that Mr. Macklin told you that he notified Spicer to contact him, that is, Mr. Macklin, should he find any grain or feed upon the premises of the club? Is that what you testified to? A. No, he didn't say that.

Q. What did he say?

A. He said, "I told John Spicer not to do anything in any event without first taking it up with me."

Q. Well, that was referring, of course, to this business of feeding and a possible violation? [343]

A. Yes, I imagine so.

Q. Isn't it a fact, Mr. Maxwell, that Mr. Macklin did not say quite that, that he said that he would tell Spicer or had told Spicer to contact either him,



(Testimony of Edward C. Maxwell.)

Macklin, or his immediate supervisor, which was Captain Hecker?

A. I have no recollection that he said that, no.

Q. You are not sure?

A. The reason I don't believe he said that was because he said, "Without first taking it up with me so I would know what was going on up there."

Q. He said what?

A. He said, "I told Johnnie Spicer in any event not to do anything without first taking it up with me so I would know what was going on up there."

Q. Do you deny that he said to take it up with him or with Spicer's immediate supervising officer?

A. I have no recollection that he made that statement.

Q. But you do recollect these other things to which you have testified that took place during the conversation?

A. That is correct. I also had another conversation.

Q. Excuse me, if you will, please, but let's stick to this one conversation for a while. You stated that you told Mr. Macklin that you thought Spicer was not very friendly to [344] you, and so forth. As a matter of fact, didn't you tell Mr. Macklin at that time that Mr. Spicer had never accepted invitations to hunt on your club?

A. I might have. That is possible.

Q. And didn't Mr. Macklin reply that as a matter of policy he directly discourages all wardens under him from accepting such invitations?

(Testimony of Edward C. Maxwell.)

A. He might have said that.

Q. Did he say that?

A. I don't remember, but he might have. I wouldn't deny it.

Q. You had a telephone conversation with Mr. Macklin on the 10th of October, didn't you, on or about the 10th?      A. The 10th of October?

Q. Yes, a telephone conversation.

A. With reference to feeding?

Q. Yes.

A. I don't recall that. I might have, but I don't recall that.

Q. Let's see if this will help you. Didn't you have a telephone conversation on or about the 10th of October with Mr. Macklin, at which time Mr. Macklin told you you could feed on your club if it was cleaned up before shooting?

A. I don't recall that.

Q. But you do recall the occasion on which you had a [345] conversation with him on the 20th of October?

A. Yes, I do. I went to his office.

Q. Isn't it true you had a telephone conversation with Mr. Macklin on the following Monday after you were cited for the violation in issue in this case?      A. I did.

Q. Didn't you admit to Mr. Macklin at that time there had been some feed on the premises on the day on which you were cited for the violation?

A. I might have said there was some beans.

(Testimony of Edward C. Maxwell.)

Q. What about barley? Did you say anything about barley?

A. I have no recollection of saying there was any barley on there.

Q. But you do recall saying there were beans?

A. Yes, probably I did.

Q. Mr. Maxwell, referring to Defendant's Exhibit B, you state you dictated that letter?

A. Yes, sir.

Q. And Mr. McCormick signed it?

A. Yes, sir.

Q. Were you familiar with what was said in that letter, that is particularly with regard to the letter of January 14th, which Mr. Elder wrote to you?

A. Yes. To me? [346]

Q. Excuse me. To Mr. McCormick.

A. I had that letter before me when I dictated this one.

Q. What was the reason for your dictating it instead of Mr. McCormick, or writing the letter?

A. Mr. McCormick came in to see me about writing the letter, because we had had some difficulty with the—we had been unable to shoot the club for three shoots prior to that letter.

Q. What was the reason for being unable to?

A. Of my own knowledge, I don't know.

Q. Were you an officer of the club?

A. I was and I am.

Q. So you did have some knowledge of the reason for your not being able to shoot?



(Testimony of Edward C. Maxwell.)

A. No first-hand knowledge. I was told.

\* \* \*

Q. (By Mr. Johnson): Leaving that subject for a minute, Mr. Maxwell, and referring to the date of the 17th of October, when you stated you had a conversation with County Game Warden White, [347] I think you stated—correct me, if I am wrong—that he told you that there was an amount of feed on the premises of your hunting club, but that it was not, in his opinion, an unreasonable amount. Is that what he said?

A. Yes. But I would like to correct the statement. I was thinking of that date during the lunch hour, and it was on Tuesday, the 18th, that I had that conversation, instead of Monday, the 17th, but he did tell me after—he came in and said he had checked the club with Jim McCormick, and that while there was feed on there, it was his opinion that, considering the ducks there and the amount of feed that remained, it should be sufficiently clean up.

Q. What kind of feed was there?

A. He didn't say

Q. Did you know?

A. No. I never saw the marsh.

Q. You didn't know when it was placed there, either?

A. No, I did not. I knew—no, I did not.

Q. Because you are a lawyer, you mean you are making the proper answer in saying you don't know of your own knowledge, is that it?

(Testimony of Edward C. Maxwell.)

A. I was told, but I do not know of my own knowledge. In the face of the court's admonition, I am trying very hard to abide by his admonition.

Q. Do you keep a register of people who shoot at the [348] Santa Clara Club, a register of the people shooting on a particular day?

A. I don't myself personally.

Q. One is kept?

A. I am not sure. I think there is one, but I am not sure it is kept regularly.

Q. You are an officer of the club?

A. Yes, but I have nothing to do with that record.

Q. To the best of your knowledge, a register is kept of those who shoot on the club?

A. I don't know. There may be a record kept of the men who bring guests, because there is a guest fee, but I am not sure.

Q. As a matter of fact, you know there was one kept in the season of 1948, don't you, 1948 and '49?

A. No, I don't know. I know they keep some record for guests, but I have never inspected the guest book. Mr. Eugene Doud, president, simply went over the books, came into my office and said, "These men owe so much for guests," and I had my secretary mail out the bill.

Q. As a matter of fact, Mr. White, a County Game Warden, has shot on your club, hasn't he?

A. Oh, yes.

Q. Quite often?

A. Well, he has shot several times a season. I

(Testimony of Edward C. Maxwell.)

would [349] not know how many. He shot as my guest on occasions.

Q. But Mr. Spicer never shot on your club that you know of?

A. No, not to my knowledge.

Q. But you have asked him to hunt on your club?

A. I may have, although I don't remember whether I did or did not.

Q. Do you remember telling Mr. Macklin that you had asked Mr. Spicer to hunt on your club and he had refused the invitations?

A. I don't remember saying that I had.

Q. That he had been invited?

A. I might have.

Q. Did either of the wardens Bedwell ever hunt on that club?

A. Not on the days I was there. You know, I can't hunt every day.

Q. Since you learned from Mr. Macklin that the policy of his office is to instruct wardens not to accept such invitations, you haven't issued any, have you?

A. Me personally?

Q. Yes. A. I think I have, perhaps.

Q. But you do realize it is not the policy of the game wardens to accept such invitations ever since you talked [350] to Mr. Macklin?

A. No. The only game warden I have even invited to shoot on the club that I have any recollection of was County Game Warden Jack White.

Q. But you do recall what I asked you before,



(Testimony of Edward C. Maxwell.)

that Mr. Macklin had told you it was not the policy, or it was the policy of his office to discourage game wardens from accepting such invitations? Do you remember I asked you that question?

A. I remember you asked me, and I don't think I said I remember, but I said he might have said so. It might have occurred, too.

Q. You referred to these rest ponds, Mr. Maxwell. Could you tell the court and jury again where they are located? I don't know if you did tell them. Would you tell them where they are located?

A. Do you wish me to point that out on the map?

Q. Could you refer to my humble little diagram here? A. That is not very accurate.

Mr. Irwin: Let's use the exhibit.

Q. (By Mr. Johnson): It shows the location of the ponds, and presumably there were certain ponds that were used, right, for rest ponds?

A. No.

Q. What are rest ponds? [351]

A. We call rest ponds the area over which there is no shooting.

Q. Are they these squares that are depicted in this picture, Government's Exhibit No. 1? Would it be in one of those?

A. Over here, if there were no water over here or very little water, into this area, they would be rest ponds, over in here.

(Testimony of Edward C. Maxwell.)

Q. In other words, this might be a rest pond, this particular one here?

A. It could be, yes.

Q. Or this one?           A. Yes.

Q. What were being used as rest ponds on the 22nd of October?           A. I don't know.

Q. You don't remember?

A. I didn't see any. It was dark when I came on the club, and I came off directly, as I told you, I came off of there and came right on down.

Q. When you have a rest pond, though, you don't hunt over it, isn't that the idea?

A. As a rule, we don't hunt over the rest pond, no, although if the hunting is slow, sometimes the men go out and walk through the area, or if there is a crippled duck there, [352] the men pick it up.

Q. But generally, you don't?

A. That is correct.

Q. Don't you generally agree which particular pond or area is to be a rest area?

A. We do not.

Q. How do you know which are the rest ponds?

A. Because they are areas which don't have much water in. You can't shoot ducks much over areas where you do not have water.

Q. Isn't it true that these last two ponds here, these easternmost ponds or squares were rest ponds on the 22nd day of October?

A. As I stated to you a few minutes ago, I don't know, because I did not see them. I was not over that far. I was in the east end of the club. I came

(Testimony of Edward C. Maxwell.)

out in the dark and came right straight back to where Mr. Elder was sitting, and I paid no attention to those ponds.

Q. You didn't have any understanding about where the rest ponds were? A. No.

Q. You stated that you had seen an invoice for 80 sacks of grain and that the grain which had been used in the experiment, photographs of which counsel has submitted in evidence—excuse me—you stated you saw an invoice representing [353] those 80 sacks, correct?

A. I saw an invoice for 80 sacks.

Q. Did you see any of the sacks?

A. I didn't see any of the sacks excepting the sack that was taken out on the club last Saturday afternoon.

Q. Those were the same sacks that contained the grain that had been put on the club prior to October 22nd, the same shipment?

A. Mr. Vincent Doud—yes.

Q. How many pounds did each of those sacks contain? A. I don't know.

Q. Have you ever known?

A. Only what I was told.

Q. What were you told?

A. They averaged 90 pounds.

Q. Each sack? A. Each sack.

Q. Mr. Maxwell, are you admitted to practice before the Federal Bar?

A. Yes, or I was at one time. I don't know whether it has to be renewed.



(Testimony of Edward C. Maxwell.)

Q. I think it is still good. You are familiar with the interpretation of laws and regulations, are you, as an attorney?

A. What laws and regulations? [354]

\* \* \*

Q. (By Mr. Johnson): You are familiar with the regulation concerning the baiting of migratory waterfowl? A. Yes, I read the regulation.

Q. Did you ever attempt to interpret it in the light of your legal knowledge? A. No.

Q. Did you ever make any research into the question of just what one can do with regard to baiting and feeding?

A. No, except through the sources that I have just testified to today.

Q. I mean other than that, I mean directly as an attorney did you ever attempt it? A. No.

Q. You never attempted to advise your club or its members of what are the rights under that baiting regulation?

A. No. We knew, as I had been told by——

Q. You are familiar with the——

\* \* \*

The Witness: I knew, as I had been told by County Game Warden White, State Game Warden Edgerton, and Inspector Earl Macklin.

Q. (By Mr. Johnson): You realize, of course, that this is a federal regulation? A. I do.

Q. And you realize, also, as an attorney, that the Attorney-General of the State of California

(Testimony of Edward C. Maxwell.)

is not the one to give the interpretation of the regulation? [356]

A. No, I did not know that I realized that.

Q. Do you now realize it? A. No.

Q. Wouldn't you agree a decision of the Circuit Court of Appeals in San Francisco, which is a Federal court, as to what is the law or the interpretation to be placed on this baiting regulation, is the law? A. I think that is correct.

\* \* \*

Q. Now, referring again to your conversation with Mr. Macklin, [357] did you tell him how many sacks of barley had been placed out on the premises of the Santa Clara Hunting Club?

A. I don't recall that I did.

Q. You don't remember telling him that you put out forty 90-pound sacks?

A. No. May I explain my answer?

The Court: Yes, I think you can explain it.

The Witness: Inspector Macklin that day was very busy. He was on the telephone in the half hour I was in his office, I imagine at least two-thirds of the time, and it was in between calls that we were able to converse, and we were constantly being interrupted by important conversations which he had to make, but I do not recall mentioning anything about how many sacks of barley were put out on the premises.

Q. (By Mr. Johnson): Thank you. Now, Mr. Maxwell, what kind of photograph was used to take these pictures, if you recall or if you know?

(Testimony of Edward C. Maxwell.)

A. I don't know.

Q. Did you see the photograph, or I mean the camera?

A. I saw the camera.

Q. What did it look like?

A. There is a square and you have to look down into it, and it looked like he had plates he had to move, and he had me look down into it myself so that the angle of the camera would truly reflect the depth of the water. I wanted it [358] in certain positions, which I felt were comparable, and I testified before that he took the picture of myself where I had put the grain, the 18 handful of grain. I checked that with my own eyesight.

Q. Did you walk down in the water at all?

A. No.

Q. Did anyone else?

A. No.

Q. You didn't muddy up the water with your hands, or anything?

A. Nobody had their hands in the water.

Q. You just threw the grain in the water and then photographed it?

A. That is correct. The grain sunk to the bottom and all this chaff and stuff stayed on the top. I backed off of there, of the road, and Mr. Vincent Doud leaned over like he is there.

Q. How long after you threw this grain into the water or on the water, or both, were the photographs taken?

A. You mean the photograph of the 18 handful that I threw on the water, Exhibit E?

Q. Yes.



(Testimony of Edward C. Maxwell.)

A. I would say a minute or two at the most.

Q. With regard to these, how soon after the grain was thrown out there were G and F taken?

A. About the same interval of time.

Q. Referring to defendant's Exhibit D, what are those in there in the barrel, if you know?

A. In that bucket?

Q. Yes.

A. That is the same grain and all the different weeds, such as wild celery and all that, that we got out of the sack containing the 45 pounds and put in here. We simply lifted up the sack and poured about a quarter or a third of the bucket full, and then I just picked that up, because I was going to put that in, and I wanted my hands to show.

Q. That, you say, contains about 45 pounds?

A. About 45 pounds.

Q. Did you weigh it?

A. No. I am just approximating it.

Q. It was a 90-pound sack and it was about half full then?      A. Just about half full.

Q. As a matter of fact, Mr. Maxwell, on October 22nd or October 21st, and for the 10 or 12 days previous to that, at least, you realized that it was unlawful that bait be on the pond at the time you are shooting during the hunting season, did you not.      A. Will read that question?

Q. Let me put it this way. You knew then, on October 22nd [360] and on October 21st, that it was unlawful to shoot over baited ponds, did you not?

(Testimony of Edward C. Maxwell.)

You knew that the grain had to be cleared up before the hunting season opened and shooting started?      A. Substantially, yes.

Q. What do you mean by "substantially"?

A. I understood and I still think that if the grain is substantially cleaned up on the club, that that sufficiently complies with the Act.

Q. I will show you Government's Exhibits 2, 3, 5, 6, 7, 8, and 9, and ask you if, in your opinion, the scenes depicted in those photographs reflect that the bait, if it is bait on the premises, is substantially cleaned up.

A. No, I wouldn't say that the pictures depicting the beans here, I wouldn't say that that was substantially cleaned up.

Q. More particularly referring to Government's Exhibit No. 2, which I believe shows barley, at least it looks like barley, will you say that is substantially cleaned up?

A. No. For that particular spot, I would say that there is——

Q. Go ahead.

A. Oh, maybe I don't know. It is awfully hard to judge barley.

Q. Would you say it is substantially cleaned up in [361] that particular spot?

A. No, that particular spot has a little grain, more than I would consider substantially, but not very much. It is pretty hard to judge barley.

Q. Referring to Government's Exhibit 4 which, according to the testimony of some other witnesses,

(Testimony of Edward C. Maxwell.)

represents a scene where barley was placed on the premises, would you say it has been substantially cleaned up at that particular spot?

A. If those spots were——

Q. I am talking about that particular spot. Would you say it is substantially cleaned up in that particular spot? A. Yes, I would.

Q. Would you say that the lima beans had been substantially cleaned up in all the other photographs, according to the scenes depicted?

A. I think I said I would not consider that substantially cleaned up, if that were grain.

#### Redirect Examination

By Mr. Irwin:

Q. Just a moment. Do I understand, Mr. Maxwell, you are conceding with Mr. Johnson, that beans are bait? A. I do not. [362]

(Witness excused.) [363]

#### ROSWELL C. WELCH

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Irwin:

Q. Mr. Welch, what is your occupation?

A. I am a game warden employed by the Division of Fish and Game of the State of California.



(Testimony of Roswell C. Welch.)

Q. Were you so engaged in October of last year?

A. I was.

Q. How long have you been engaged in conservation work?      A. For nearly 21 years.

Q. Where were you working on the 21st day of October, 1950?

A. In the duck areas of southern Tulare County and northern Kern County.

Q. With whom were you working?

A. I was working with the warden of Kern County, Lester Arnold, and Mr. Long, Warden Ellis, Warden Riley, Warden O'Reilly, Warden O'Brien, and Agent Elder.

Q. Were you with Agent Elder at any time during that [364] day when you were away from the rest of the agents?      A. I was.

Q. While you were with Mr. Elder, was any comment, any remark made by him about any situation at Oxnard?      A. There was.

Q. This was what time of the day on the 21st?

A. Approximately at noon on the 21st of October.

Q. What did Agent Elder say to you, what did he say?

A. He said that he had a report that there had been some feeding of ducks on the club of which Mr. Carty was a member.

Q. Now, Mr. Welch, in the 21 years that you have been a game warden, you have had experience with different types of feed that ducks will eat, that are attractive to ducks, have you not?

(Testimony of Roswell C. Welch.)

A. I have.

Q. Has your work taken you in areas where lima beans are found?

A. Not in the time I have been working, but prior to that time, around the Monterey-Salinas Valley area.

Q. Have you any opinion as to whether or not beans are duck food?

A. To my knowledge, they are not eaten by ducks.

Q. In this conversation you had with Mr. Elder, did he express any opinion to you as to what he thought about [365] beans with reference to whether or not they are duck feed?

A. He said he didn't believe beans constituted a bad factor in baiting of ducks.

Q. He said what?

A. He said he didn't figure lima beans constituted a bad factor in the baiting of ducks.

### Cross-Examination

By Mr. Johnson:

Q. He said "a bad factor." Did he say what he meant by "bad factor"?

A. I won't say he used those words.

Q. He didn't say ducks won't eat lima beans, did he?

A. No, he did not say ducks won't eat lima beans.

Q. You say to the best of your knowledge ducks won't eat lima beans?

(Testimony of Roswell C. Welch.)

A. I have never heard of ducks eating lima beans.

Q. What is your knowledge?

A. On the Elkhorn Slough years ago, I used to shoot there, and some of the farmers—at that time it was legal to put out feed to attract ducks, and they might have some lima beans and we put them in a pond, and they were not touched by anything. They laid there and rot.

Q. Did you see them putting them on the ponds?

A. We put them there ourselves. [366]

Q. Did they sink to the bottom?

A. No, they didn't.

Q. You mean to say a duck will never eat lima beans?      A. To my knowledge, they won't.

Q. Isn't it true if a duck is hungry enough, he would eat lima beans?

A. I don't know. I never saw them that hungry.

Q. You don't know for sure that they don't eat lima beans?

A. No, but to my knowledge, they don't.

Q. Referring to this conversation of October 21 that you say took place about 12:00 noon between yourself and Agent Elder, are you sure that conversation didn't relate to an incident in the 1948-49 season?

A. I wouldn't state positively that it didn't.

Q. In other words, it might have related to the season of 1948-49, rather than to this last season, is that true?

A. There is a possibility that it might have.



(Testimony of Roswell C. Welch.)

Q. You are not sure that it related to this last season? A. No, I am not.

Q. You stated, I believe, you have spent 21 years in the service? A. Yes.

Q. And that prior to that time you had been in a lima area? [367] A. Yes.

Q. But during that 21 years, you haven't been in the lima bean area? A. No, I haven't.

### Redirect Examination

By Mr. Irwin:

Q. In reference to cross-examination of government counsel, was anything said by Mr. Elder that he was expecting a telephone call?

A. I can't recall that there was.

### Recross-Examination

By Mr. Johnson:

Q. How many times have you discussed this case with Mr. Carty? A. Only that one time.

Q. What one time?

A. Will you ask that question again?

Q. Yes. How many times have you discussed this case and your testimony with Mr. Carty?

A. I think it was the 31st of October I first discussed [368] it with him.

Q. How long have you known Mr. Carty?

A. I have known Mr. Carty six or eight years. I can't recall——

(Testimony of Roswell C. Welch.)

Q. Has he been on the Fish and Game Commission all that time that you know of?

A. Not all that time.

Redirect Examination

By Mr. Irwin:

Q. You also discussed your testimony with Mr. Elder, did you? He talked with you before you got on the stand, too, didn't he? A. Yes.

\* \* \*

CARLOS GETMAN

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Irwin:

Q. What is your occupation, Mr. Getman?

A. I am a State Fish and Game Warden.

Q. On the 14th of October, where were you temporarily stationed in 1949?

A. I was in Ventura County.

Q. You know Mr. James McCormick, do you not?

A. I am acquainted with Mr. McCormick.

Q. Did you have occasion to see him on the 14th day of October? A. I did.

Q. By the way, the reason I am asking you these exact dates, is it part of the regulations of

(Testimony of Carlos Getman.)

you game wardens that you keep a diary and record of your activities, the people you see and the things you do, in connection with your duties?

A. It is.

Q. You have refreshed your recollection from your diary as to the date you talked to Mr. McCormick? [370]

A. That is right.

Q. You say you saw him on the 14th day of October?

A. That is correct.

Q. Where did you see him?

A. In Ojai, California.

Q. That would be about seven days before the opening of the duck season?

A. That is correct.

Q. This is 1949, this last October?

A. That is correct.

Q. Did Mr. McCormick make any request of you in connection with the Santa Clara Game Preserve?

A. He did.

Q. What was that request?

A. I might correct that in regard to that request.

Q. Just change it to what ever happened, please, sir.

A. Mr. Jim McCormick contacted me on that particular day in Ojai and told me that there was considerable grain on the duck club, his duck club, and he said that there was a very poor flight of birds, and he did not think the birds would clean it up, and he had talked it over with Mr. Carty, and I told him I would pass the information along.



(Testimony of Carlos Getman.)

Q. Did he make a request that you please check it over?

A. I don't recall him making a remark about checking. [371]

Q. Did you say that you would?

A. No, I did not. I said I would have—would pass the word along.

Q. Did you pass the word along?

A. I did.

Q. To whom did you pass it along?

A. To Warden John Spicer.

Q. When did you do that?

A. The following day.

Q. That would be the 15th of October?

A. Yes, sir.

Q. You made a record of it, of having done that, did you?      A. I did.

#### Cross-Examination

By Mr. Johnson:

Q. What did you tell Mr. Spicer?

A. I told Mr. Spicer exactly what Mr. McCormick had told me.

Q. Did you go to see the premises yourself?

A. I did not. I was not assigned to that area at that time.

Q. Is Mr. Spicer your superior game warden?

A. He is not. [372]

(Testimony of Carlos Getman.)

Redirect Examination

By Mr. Irwin:

Q. You were being detached from that area, were you, on temporary duty?

A. I was not assigned on that particular day. I was assigned to the Santa Maria area on the opening of duck season.

Q. But you knew Mr. Spicer did have Oxnard in his jurisdiction, so you gave him the substance of the conversation between Mr. McCormick and yourself?

A. That is correct. [373]

\* \* \*

EDWARD C. MAXWELL

having been previously duly sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Irwin:

Q. Mr. Maxwell, you were asked yesterday on cross-examination whether or not you had had a phone conversation with Mr. Macklin on October 10. Do you recall that question?

A. I do.

Q. Since the recess of court yesterday, did you obtain your long distance telephone calls from your office at Oxnard? [375]

A. Yes. I had them sent down to me.

Q. Do you have them with you?

A. Yes, I have them here.

Q. I have shown them to counsel. After re-

(Testimony of Edward C. Maxwell.)

freshing your recollection by looking at your toll calls, are you able to state definitely whether or not you called Mr. Macklin on October 10?

A. I am.

Q. And what do you say?

A. I did not have any call or conversation with Mr. Macklin on October 10.

Q. As far as you know, did you have any further conversation with him other than the conversation that you related that took place when you went down to see him in his office?

A. That, and a subsequent conversation on the 24th.

Q. After October 22nd?

A. After October 22nd. [376]

\* \* \*

### EARL MACKLIN

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Irwin:

Q. Mr. Macklin, will you kindly tell us where you reside?      A. Altadena, California.

Q. What is your position or occupation?

A. Assistant Chief Patrol for the Division of Fish and Game, State of California.

Q. While counsel is examining some documents, I am going to show you in a minute, I will ask you



(Testimony of Earl Macklin.)

a general question, whether or not the game wardens under your jurisdiction are required to make written reports to your office.

A. They are.

Q. And you preserve their reports in your office?

A. I do.

Q. Is Warden John Spicer, one of the witness for the prosecution, a game warden under your jurisdiction? A. Indirectly, yes.

Q. Did he send his report to your office?

A. He did. [377]

Q. And these reports are supposed to be a summary of their activities from day to day, is that it?

A. That's right.

Q. And they are furnished by them?

A. They are.

\* \* \*

Q. (By Mr. Irwin): Mr. Macklin, I show you defendants' Exhibit H for identification, which consists of three sheets, each one bearing the heading, "Department of Natural Resources, Division of Fish and Game," and in each one, in the right-hand corner, it has a stamp, "Division of Fish and Game, Los Angeles," with a date on it, and I ask you if those are sheets from your office file showing the record furnished your office by Warden John Spicer as to his activities.

A. They are.

(The document referred to was marked Defendants' Exhibit H for identification.)

(Testimony of Earl Macklin.)

Q. (By Mr. Irwin): I wish to particularly direct your attention to the first sheet, on which the name appears, "John M. Spicer, County Ventura, week ending October 22, 1949," the stamp of the Division of Fish and Game, October 27, 1949. Does that indicate that was received in your office? [378]

A. It does.

Q. And that information contained on that sheet was furnished by Mr. Spicer?

A. Yes. It bears his signature.

Q. You recognize that as his signature?

A. That is right. [379]

\* \* \*

(The document referred to was received in evidence and marked Defendants' Exhibit H.)

\* \* \*

Q. Mr. Macklin, do you know Mr. Ed Carty?

A. I do.

Q. You also know Mr. Maxwell?

A. I do.

Q. Do you recall Mr. Maxwell coming to your office shortly before the opening of the hunting season in October 1949?

A. Yes. I think Mr. Maxwell was in there about 10:30 or 11:00 o'clock on the 19th.

Q. Two days before the hunting season opened?

A. Yes. [380]

\* \* \*

Q. (By Mr. Irwin): Did you have a conversation with Mr. Maxwell? A. I did.

Q. Will you give us the conversation that you

(Testimony of Earl Macklin.)

had with Mr. Maxwell, to the best of your recollection?

A. Mr. Maxwell came into the office, and at that time we were very busy, and he was probably in the office about 30 minutes. During the telephone calls, I presume we conversed for about 10 minutes.

He seemed to be under the impression that it was okay or it was lawful to feed up to 72 hours before the season opened.

I told him there was no definite time, that that had more or less been thrashed out at a commission meeting in San Francisco on November 5, 1948, wherein Mr. Carty had brought up the question before the commission about feeding on private or commercial gun clubs, duck clubs, and two of the commissioners had taken exception to this statement that it was lawful to feed during the closed season.

Therefore, he asked Mr. Ralph Scott, the chairman of the commission did at that time, asked Mr. Ralph Scott for a legal opinion, not an official opinion in writing from the Attorney General's office, but advice and an interpretation of the federal regulation.

The commission took a recess, and after lunch came back, [381] and Mr. Scott informed the commission that he found nothing in the regulation which prohibited feeding during the closed season. However, the feed must be cleaned up before shooting started on any club, as that would constitute a violation of the federal regulation.



(Testimony of Earl Macklin.)

So I told Mr. Maxwell that I did not know where he got his 72 hours, other than he might have gotten it from a statement that Mr. Carty made to Mr. Scott.

He asked Mr. Scott if 72 hours before was a reasonable time, and Mr. Scott made the statement that probably that would be a reasonable time, but it didn't make any difference whether it was 72 hours or 86 hours, that the fact still remained that the feed must be cleaned up before shooting started.

So I informed Mr. Maxwell what had taken place at the commission meeting. I was merely quoting the advice given to us, or the opinion that was given to us by our attorney assigned by the Attorney General of California.

Then he stated that Mr. Edgerton had been on the club or he had contacted—Mr. Edgerton had contacted him, and they hadn't put out any feed, I think, after the 13th of October, which would be approximately nine or ten days before the season opened. I don't know whether it was the 13th, but somewhere in that length of time, at least, and he wanted to know if Mr. Edgerton had called me and discussed the matter with [382] me. I told him he had.

Then he wanted to know what I told Mr. Edgerton, and I told him that I had informed Mr. Edgerton exactly the way I had informed Mr. Maxwell, of what had taken place in San Francisco the year before.

Then he brought up Mr. Spicer, and he said Mr.

(Testimony of Earl Macklin.)

Spicer and the State wardens in that area—I think he singled out Mr. Spicer in particular and said that he had been unfriendly, he didn't come around to the club and come in as a friend, and he seemed to think that Mr. Spicer harbored some resentment against the club members for the reason that certain members of that club had taken part in retaining Mr. White on his job as Ventura County Game Warden.

I told him that I was surprised, that I did not feel Mr. Spicer harbored any resentment. However, he was in Los Angeles, had been working out of the office the day before or that day, and would be in the next day on a warrant detail, and that I would ascertain, if possible, if there was any resentment, and if there was any resentment on his part, that I would instruct Mr. Spicer to contact me when anything came up in the area which involved the enforcement for the club as a whole, on all the clubs in that area, not this one in particular, but all the clubs.

With that, Mr. Maxwell departed. That was the extent of our conversation in so far as it pertains to this case. [383]

Q. With reference to your conversation as to telling Mr. Maxwell about cleaning up the club before shooting, was the word “substantially” used by you or “reasonably”?

A. Yes. There was some conversation on that. In fact, I seemed to have had the impression from Mr. Maxwell that possibly the State wardens would

(Testimony of Earl Macklin.)

pick up the club on any technical violation, due to this controversy or friction, and I told him that wardens under my supervision and captains were instructed not to make technical arrests. That is the policy of the division as a whole. That is in the patrol department.

I told him that I felt if the club was reasonably cleaned up, that there wouldn't be any arrests made.

Q. You know Mr. Elder, do you not?

A. Yes, sir.

Q. After the 22nd of October, did you have a telephone conversation with him with reference to the events that took place on the 22nd at the Santa Clara Game Preserve?

A. Yes. I had a conversation with him, I think, on the Tuesday, the 26th.

Q. In the course of that conversation, was anything said between you about beans, as to whether or not they constituted feed?

A. I don't recall whether—I don't think so on that date, no. [384]

Q. Did you discuss it at any time with Mr. Elder?

A. Later on, yes.

Q. Where was that?

A. In my office.

Q. What was said by you or Mr. Elder with reference to beans being duck feed?

A. In my conversation with Mr. Elder over the phone, I asked how much feed was on the club, and he stated there was between three and four tons of barley and possible ten tons of beans.

I had called him or tried to contact him for the



(Testimony of Earl Macklin.)

reason that my chief in San Francisco had asked for a report, and all I was trying to do was get the highlights of what took place.

Later on, I think the following week or it might have been ten days later, Mr. Elder and Mr. Weis-  
chert, his immediate superior in Portland, Oregon,  
called at our office, and we discussed the amount of  
feed on the club, and especially the beans.

I made the statement to Mr. Elder that I thought  
beans were a very poor feed for ducks, and he  
agreed with me.

Q. How long have you been in conservation  
work?           A. Twenty-three years.

Q. Was your remark to Mr. Elder based on your  
experience of 23 years? [385]

A. Somewhat, yes.

Q. By the way, coming back again for a moment  
to your statement to Mr. Maxwell, that you would  
instruct Mr. Spicer, as you have testified, did you  
talk to Mr. Spicer then?

A. Yes. On the 20th, I think, he returned to the  
office about 1:00 o'clock and turned in the warrant  
and his report. I mentioned the fact to him that Mr.  
Maxwell had been in and we had discussed certain  
things up there relative to the district, and I ques-  
tioned him on this fact that Mr. Maxwell felt that  
he harbored ill feeling toward the club membership.  
Mr. Spicer denied that, and I suggested——

\* \* \*

The Witness: Denied that there was any ill feel-  
ing toward the club membership.

(Testimony of Earl Macklin.)

We talked over the opening of the duck season, and I told him—I asked him if he had inspected the clubs up there as to the amount of feed that might be remaining on the clubs, and he said no.

I suggested to him that he might the next morning make a round of the clubs or check with the other wardens in the area to find out if they had inspected the clubs.

Q. Did you also tell him to contact you?

A. I told him I would appreciate it that he would contact me if anything involved the clubs as a whole. [386]

Q. Did you hear from Mr. Spicer between that time—that was on the 20th—did you hear from him? Did he report back to you anytime in the next two or three days?

A. No. I never heard anything from Mr. Spicer until I called him on the 26th to find out what had taken place on the 22nd.

\* \* \*

Q. (By Mr. Irwin): I will reframe it. I think your previous answer, Mr. Macklin, was you didn't see Mr. Spicer until you called him in on, I think you said the 26th.

A. I called him on the phone on the 26th.

Q. On the telephone? A. Yes.

Q. At that time did you talk to him about how much feed was on the club? A. I did.

Q. What did he say?

A. Well, he was rather indefinite about the

(Testimony of Earl Macklin.)

amount of feed that was on the club, and I told him that I was preparing [387] a report for our San Francisco office, and I would like to have him make an estimate, at least, and he said, "Well, I don't know how much was on there." He said, "What did Elder say?"

I said, "Elder said between three and four tons."

He said, "No, I don't think there was that much."

I said, "Well, was it two tons?" He said, "No, I don't think so."

Well, I said, "was there a ton?" He said, "Well, somewhere between a ton and two tons."

Mr. Irwin: Cross-examine.

The Court: By "feed," you mean oats?

The Witness: Barley.

The Court: You are not including lima beans?

The Witness: No, I am not.

### Cross-Examination

By Mr. Johnson:

Q. Mr. Macklin, referring to your conversation with Mr. Maxwell on the 19th of October, it is a fact, is it not, then, that you told Mr. Maxwell that all feed must be cleared up before anyone shoots on the club?

A. I told him that the feed should be cleaned up, as that constituted a violation, to shoot over a baited pond.

Q. You realize, don't you, that this is a federal regulation? [388]

A. I do.



(Testimony of Earl Macklin.)

Q. You realize, also, from your experience in this field, that the Attorney General's office of the State of California is not the body to give the proper interpretation of the regulation, since it is a federal regulation?      A. I presume you are right.

Q. Isn't it a fact, Mr. Macklin, that on the 19th of October, when you had a conversation with Mr. Maxwell, you told him that you would advise Mr. Spicer if anything occurred in the line of a feeding violation, to let either you or his superior, Captain Hecker, know.      A. I told him, yes.

Q. Did you tell him that?

A. I told him, yes, that through the regular channels, when a warden in the field, where he is working under a captain, he takes that up with his immediate superior first.

Q. And you told Mr. Maxwell you would tell him to take it up either through channels with his superiors or directly with you?

A. Yes. I told him I would have him take it up with either his captain or myself, but preferably myself.

Q. You said either or?

A. Yes, that is right.

Q. Did Mr. Maxwell phone you on the Monday after the 22nd of October? [389]

A. He did.

Q. What did he say at that time?

Mr. Irwin: Just a minute. Object to that as not proper cross-examination.

(Testimony of Earl Macklin.)

The Court: Overruled.

Q. (By Mr. Johnson): Would you go ahead and answer, please?

A. Yes. He called me on the Monday following. That would be the 22nd—the 24th, I guess.

Q. What was said during that conversation, that telephone conversation?

A. He called me and he said, “Well, I guess we have all been arrested.”

I said, “What took place?”

Then he told me about Mr. Elder and the State wardens coming in on the club and seizing their ducks and giving them notice of violation.

Q. Isn't it true he admitted there was feed on the premises on that day?

A. He said there was some feed, yes.

Q. Isn't it true you received a phone call on or about the 10th of October from Mr. Maxwell?

A. No, I did not. I, for a time, thought I had received a call. I was receiving so many calls about that time—— [390]

Q. Do you recall coming to my office and discussing this matter with me about a week ago, last Friday?      A. Yes, I do.

Q. You recall telling me you had had a call on or about the 10th of October?

A. Yes, I did, and I thought I had a call from Mr. Maxwell.

Q. Now you say you were mistaken in what you told me at that time?

(Testimony of Earl Macklin.)

A. Yes. After checking my records, I know I was mistaken then.

Q. You said Mr. Maxwell admitted to you or stated to you in a conversation on the 19th of October that on the 13th of October feed had been put out, is that correct?

A. On or about that time. I don't recall the exact date.

Q. You mentioned something about it being nine or ten days before the season opened.

A. That's right.

Q. You didn't mean nine or ten days with reference to the 13th of October, because the season opened on the 21st.

A. The season opened on the 21st.

Q. Therefore, it would be eight days, would it not, if the 13th of October were the date on which Mr. Maxwell said they put out feed? [391]

A. I don't recall the date he told me. In other words, it was approximately ten days before. I don't remember exactly the date.

Q. But you think it might have been the 13th?

A. Could have been the 13th, 10th, 11th.

Q. You did mention the 13th in your direct examination. A. Yes.

Q. And if it were that, you recognize it would be less than 10 days? A. Yes, that is right.

Q. Referring to Mr. Maxwell's statement that Spicer had been unfriendly, didn't he also make the remark he felt a little hurt, or something to that effect, because Mr. Spicer had not accepted invitation to hunt on this private hunting club?



(Testimony of Earl Macklin.)

A. He made the statement the boys were always welcome there at the club and they could shoot any-time they wanted to.

Q. And that Mr. Spicer had never——

Mr. Irwin: Just a minute. May he finish his answer? Did you finish your answer?

The Witness: No.

Q. (By Mr. Johnson): Go ahead and finish. I am sorry.

A. I told him I had had invitations to the various private clubs up there and as a matter of policy we didn't always accept invitations to shoot on private or commercial clubs. [392]

Q. That is the policy of your office and the ward-ens under you?

A. Yes. That has been transmitted to the cap-tains over a period of years at the annual meetings, and I assume that it has been passed on to the ward-ens in the field.

Q. Referring to your conversation with Mr. Elder and Mr. Weischert, you didn't state the date.

A. I don't remember the date when it was.

Q. You say Mr. Elder said lima beans are poor feed?      A. He did.

Q. And you agreed with him?      A. I did.

Q. When you say lima beans are poor feed, that doesn't necessarily mean they won't eat them, does it?

A. I believe a duck would have to be starved be-fore he ate them, myself.

Q. A duck will eat them, if he is hungry?

(Testimony of Earl Macklin.)

A. Yes. He would have to be awfully hungry, though.

\* \* \*

Q. (By Mr. Johnson): Isn't it true, Mr. Macklin, a duck will eat whatever is prevalent in the area he happens to be in? If it is lima beans, he will eat beans, and if it is rice, he will eat rice?

A. I wouldn't say so.

Q. If the duck is hungry enough?

A. If the duck is hungry enough, certainly.

\* \* \*

Q. You say you told Mr. Spicer that if the area was substantially cleaned up, he was not to make any arrest?

A. I told him not to make any technical arrest.

Q. Assuming this is barley, which the testimony has indicated it is, showing you Government's Exhibit No. 2, would you say that would be a technical arrest if an arrest were [394] made on the basis of the grain in that picture?

\* \* \*

A. If it only covered a very small area, I would say it was a technical arrest, yes.

\* \* \*

Q. (By Mr. Johnson): Wouldn't you say if a hunter went up there in a blind 20 feet from there, that might tend to allure, entice and attract ducks so that he could shoot them?

A. It all depends on how much grain is there.

Q. The grain in the picture.

(Testimony of Earl Macklin.)

A. I don't think so.

Q. Are you aware of a federal decision which says that any baiting of ducks which directly or indirectly attracts them to the premises is in violation of the law? A. Yes.

Q. Are you aware there is a decision which directly says you don't have to place the feed directly in front of [395] the blind, but it can be in the area away from it? A. Yes, that is right.

Q. Would you say that would not be a violation in view of that decision?

Mr. Irwin: Just a minute. I object to that as argumentative. He has asked him for his opinion.

Mr. Johnson: I am asking him if in view of this decision, which he says he knows about, he would still regard that as a technical violation.

The Court: Overruled.

The Witness: It would all depend on the amount of grain.

Q. (By Mr. Johnson): That amount there.

A. I imagine that would be a violation if——

\* \* \*

Q. (By Mr. Johnson): I didn't mean to cut you off, Mr. Macklin. Go ahead.

A. That would be a violation, I imagine, yes.

Q. Referring to Government's Exhibit No. 4, what would you say about that in the same regard?

A. What does that indicate?

Q. Assuming that it is grain, this white stuff here, [396] and on into the water.

\* \* \*



(Testimony of Earl Macklin.)

Q. Assuming that were barley, would you say that is a technical violation?

A. If there was only just that amount as shown in the picture——

\* \* \*

Q. Go ahead.

A. I would say it was a technical violation if that was [397] the only grain that was on the club.

Q. You would say that in spite of the decision of the Circuit Court of Appeals of the Federal Court, which you testify you know about?

A. There is a lot of violations.

Q. I am talking about this one decision.

The Witness: There is a lot of violations, technical violations, that we class as technical in the Fish and Game code.

\* \* \*

The Witness: Just a minute. Where we issue a warning instead of making an arrest, where we consider it technical. Therefore, a lot of the law enforcement is up to the discretion of the officer. If every officer enforced the law to the letter, the court would be cluttered so we wouldn't have time to do anything.

Q. You are not criticizing your men, are you, for bringing in the arrest in this case?

A. No, I am not criticizing them at all.

Q. Showing you Government's Exhibit 6—excuse me—5, 6, 7, 8, 9, and taking you back to 3, assuming that the material you see on the ground in those scenes in those photographs is bait, would you

(Testimony of Earl Macklin.)

regard that as a technical violation [398]? Look it over.

Mr. Irwin: I am going to have to object to that, may it please your Honor, as compound and misleading, unless counsel will include what the testimony shows, that those pictures were several different shots within a radius of five to ten feet.

The Court: Let's have the question.

(The question was read by the reporter).

The Witness: Is this all barley? If that is all barley, I would consider it a violation.

Q. (By Mr. Johnson): I asked you, assuming it is bait, not with regard to whether it is barley or anything else. A. What do you call bait?

Q. I say, assuming it is bait. You are not to decide that. Assuming it is bait. You see the material on the ground. Is that a technical violation, assuming that is bait?

A. No, if it is spread all over the club, it is not a technical violation.

Q. You mean if that bait is spread up and down the road as shown in that picture, it is a technical violation?

A. No, I didn't say it was a technical violation.

Q. So you say that would not be a technical violation, if it were properly called bait?

A. That is right. [399]

Q. Do ducks eat barley? A. They do.

Q. Do geese eat barley? A. Yes.

Q. Do geese eat lima beans?

(Testimony of Earl Macklin.)

A. I have heard they do. Not from my knowledge.

Q. In your experience in your position over a number of years, do they eat barley?

A. Barley, yes.

Q. I mean lima beans.

A. I couldn't testify to that, because I have never seen them eat beans.

Q. On what do you base your observation ducks don't eat lima beans?

A. I have hunted in that particular area and killed lots of ducks, and I have never found any beans in the ducks in that area.

Q. You stated Mr. Spicer told you that there was possibly one ton of bait on the premises of this club at the time he made the arrest.

A. He said between one and two tons.

Q. Would that be a technical violation?

A. If it was all piled up practically in one spot or more or less spread out near the blinds to attract the ducks, I wouldn't say it was a technical violation, no. [400]

Q. But you don't claim to be an attorney and expert on what is the law on the subject?

A. No, I don't.

Q. So you don't really know what is the legal effect of such a baiting as you have described?

A. What is the question?

Q. You don't really know whether that is so or not, whether it would be a violation?



(Testimony of Earl Macklin.)

A. No, I don't. I was not there. I didn't see the grain and I don't know what took place.

Q. Referring to Defendants' Exhibit H in evidence, you stated that is a report submitted to you by Warden Spicer?

A. It is.

Q. Did he discuss that report with you?

A. No, he didn't.

Q. So that you don't know what it means—may I have it a minute—you don't know exactly what it means here or what it includes, rather, under the date, October 16, where it says, "With Palmer U.S.F.S. to Santa Clara river bottom, gun clubs, and Hueneme-Pt. Magu. Return to river bottom and patrol up coast and Rincon and Casitas," you don't know what that means?

A. I assume he was with Mr. Palmer on the various gun clubs in that area. I would assume that from the wording of his report. [401]

Q. And on the 20th——

Mr. Irwin: The 22nd.

Mr. Johnson: The 21st, excuse me.

The Witness: The 21st?

Q. (By Mr. Johnson): The 21st and 22nd, then.

A. He indicates there on the report that he had checked the gun clubs in the Santa Clara river bottom area.

Q. It says a gun club. It doesn't say the gun clubs.

A. No.

Q. On the 22nd, he says he went "to Santa Clara Gun Club checking ponds for grain."

A. Yes.

(Testimony of Earl Macklin.)

Q. And on the 16th, again it says "gun clubs." It doesn't say "the gun club."

A. It doesn't indicate any particular gun club.

Q. What does U.S.F.S. mean, "with Palmer U.S.F.S."?

A. U. S. Forestry Service.

Q. What is the purpose of this report, Defendants' Exhibit H?

A. It gives a record of the field men's activities for the week.

Q. Isn't it for the purpose of obtaining operating costs?

A. That is one purpose, yes.

Q. Isn't that the main purpose? [402]

A. No.

Q. It purports to be a narrative, doesn't it, of the general area covered?

A. That is right.

Q. Mr. Macklin, I think your testimony was that Mr. Spicer told you on the 20th that he had inspected the gun clubs for grain and feed.

A. No. Yes, on the 20th, that is right. I asked him——

Q. This report is——

The Witness: I asked him if he had inspected the gun clubs in that area. I asked him first if the gun clubs had been feeding prior to the opening of the season, and he said he thought they had, and I had asked him if he had inspected them recently, and he said no.

Redirect Examination

By Mr. Irwin:

Q. With reference to Defendants' Exhibit H,

(Testimony of Earl Macklin.)

counsel asked you what is was. One thing it is supposed to be is accurate and correct to the extent of what is set down on those reports.

A. Yes, it is supposed to be accurate. [403]

Q. And you know the Santa Clara Gun Club, which the defendants operate, is one of the Santa Clara river bottom gun clubs.

A. That's right.

Q. I forgot to inquire, Mr. Macklin, are you also a deputy federal warden? A. Yes.

Q. You have been 23 years in conservation work, as you have testified, in response to counsel's question, and I believe you stated you don't feel confident to say what are the federal regulations or what are not, as far as the interpretation is concerned?

A. Well, we interpret the laws the best we can and——

Q. That's right. Had you finished? I don't want to be guilty of the same infraction.

A. Yes.

Q. With reference to the telephone call that you had from Mr. Maxwell on the Monday following, concerning which Mr. Johnson inquired, when Mr. Maxwell told you they had found some substance on there, didn't he say there were some beans on there, using the term "beans," rather than feed?

A. Yes, he mentioned the beans, that is right. I recall that. [404]

\* \* \*

Q. In your conversation with Mr. Spicer when you called him on the 26th to find out what went on,



(Testimony of Earl Macklin.)

did the name Bud Elder figure in your conversation?      A. He said that—as I recall——

\* \* \*

The Court: The witness has not been allowed to answer the question. Will you read the question.

(The question was read by the reporter).

Q. (By Mr. Irwin): That just calls for a yes or no answer. I am trying to lay a foundation.

A. Well, yes.

Q. Very well. Did his name figure in the conversation with reference to any date prior to October 22nd, which is [405] the date on which these events took place?

A. I think he told me he called Mr. Elder, or he had called Captain Hecker Friday night, and Captain Hecker had instructed him to call Mr. Elder.

Q. Was there any further conversation as to any prior contact with Mr. Elder?      A. No.

\* \* \*

The Court: Mr. Bedwell testified that there were approximately 15,000 ducks on the ponds. I assume that was before the season opened. Do you have any idea, based upon your experience, how much food ducks will eat in tons and sacks of barley or feed?

The Witness: Well, if there was 15,000 ducks in that club prior to the opening of the season, they would have ate several tons of grain within three or four days time. A duck eats, I don't know exactly the amount a duck would eat, but probably, conservatively, at least a half a pound a day. [406]

\* \* \*

## LES ARNOLD

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [407]

## Direct Examination

By Mr. Irwin:

Q. Mr. Arnold, where do you reside, sir?

A. Bakersfield, Kern County.

Q. What is your business or occupation?

A. State game warden.

Q. How long have you been so engaged?

A. Twenty-four years this coming August 1.

Q. Do you know Agent Elder?

A. Very well.

Q. Did you have occasion to see him on October 20, 1949?      A. I did.

Q. When and where and under what circumstances did you see him?

A. He came up to Bakersfield to go with me in the duck fields.

Q. Was he with you most of that day?

A. All day.

Q. Where did you return that evening?

A. On the 20th?

Q. That's right. Did you go to your home?

A. Yes.

Q. After you returned to your home, did the telephone ring that evening? [408]

A. Not on the 20th. The 21st.

(Testimony of Les Arnold.)

Q. I beg your pardon. On the 21st, was he with you on the 21st. A. He was.

Q. Did you return to your house on the 21st?

A. We did.

Q. Did a phone call come into your residence that evening? A. Yes, sir.

Q. Did you answer the phone? A. I did.

Q. Did you ascertain who was on the phone?

A. Yes.

Q. Who was it? A. Warden Spicer.

Q. Whom did he want to talk to?

A. Bud Elder.

Q. Did he talk to him? A. He did.

Q. After he talked to him on the phone, did Mr. Elder make any statement to you?

A. I asked him—he said he had to go down to Ventura. I asked him what was up. He said that Spicer, the boys had found some grain on the Carty club.

Q. Did he leave your home? [409]

A. We finished eating and he left the house, I imagine around 9:30, 10:00 o'clock that evening.

Q. Did you again see Agent Elder on Sunday, October 23? A. I did.

Q. Did you have a conversation with him regarding his trip over to the Ventura area?

A. Yes.

Q. Was anything said about feed?

A. Well, he was to meet me on Sunday morning



(Testimony of Les Arnold.)

in duck clubs south of town, and when we got there, I asked him what he did over there. He said, well, they pinched the Carty club.

I said, "How much grain did you find?" He said, "Oh, three or four bucketsful and a lot of beans."

I asked him—then he said, "Well, I am not so excited over the beans, as I don't figure these ducks will eat beans."

\* \* \*

### Cross-Examination

By Mr. Johnson:

Q. You are sure Mr. Elder didn't say he could have scooped up three or four buckets? [410]

A. He said, "We found three or four bucketsful."

Q. He stated he found——

A. He said, "We found three or four bucketsful."

Q. He said, "We found three or four bucketsful"?

A. Well, he said he found—yes, that's right.

\* \* \*

### EDWIN L. CARTY

called as a witness by and in his own behalf, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Irwin:

Q. Mr. Carty, where do you reside, sir?

A. At Oxnard, California.

(Testimony of Edwin L. Carty)

Q. Do you hold any official title in the Oxnard government? A. I am mayor.

Q. How long have you held that position?

A. Six years.

Q. Have you held any other official positions in the State?

A. I am the past president of the League of California Cities, past president of the National Association of Municipal Legislators, and various boards and commissions.

Q. With reference to conservation, have you been interested in conservation work?

A. For some 30 years.

Q. What positions have you held in connection with conservation?

A. Well, I have been president of a [412] good many sportsmen's clubs, Ventura County Gun and Rod Club, the Southern Council of Wardens, Southern California Sportsmen, three years, and State Sportsmen's Council. I have been Fish and Game Commissioner for three appointments since 1939 and I have got five years more to go, under two governors. I am on the International Board of the Game and Fish Conservation Commissioners, and quite a few other clubs, the Izaak Walton, Duck Association of California, and so on. A lot of them.

Q. Are all these activities, with the possible exception of mayor, and I haven't asked you that, are those positions you have held without remuneration?

A. That's right. They allow expenses, but all

(Testimony of Edwin L. Carty)

these jobs are a public service and they cost me money.

Q. Directing your attention to October 21 last, you are a member of what has been called the Santa Clara Gun Club?

A. I feel I am a privileged member there.

Q. Why?

A. Because it is a club where we do not pay rent. We have no lease on it. We don't pay the water bill. It is all composed of relatives of the McGrath family. The Douds, their mother was a McGrath. The McCormicks, their mother was a McGrath. There are just a few of us that are not relatives. We incorporated it as a club so as to protect the McGrath family against accidental deaths, so we can carry insurance. [413]

Q. Directing your attention to October 22nd, you were not there on the opening day of the season?

A. Yes, I was.

Q. Then let's take up the 21st, the opening of the season. What did you do then?

A. I went to the club about 11:00 o'clock on the opening day, and that is the first time I had been on the club in nine months, since the previous January.

Q. Using that Exhibit A there in front of you, kindly tell us how you went on the club on the 21st and where you went?

A. We first draw for blinds. We got a little cook wagon where we draw for blinds. Bob Maulhardt and I shot together. They are double blinds.



(Testimony of Edwin L. Carty)

We went out this road and there was a lot of threshing dump wagons right here that you can see. We crossed by them, and our blind was 20 and 21. That is on levee 2 in the chart there.

When I got here, there was beans, oh, about 75 yards from right there to about half-way between levee 2 and 3. I noticed that.

I said to Bob, I said, "My gosh, those beans look bad there." You could see evidence of cows. There was cow manure all through there and a lot of trash, and in the pond right here in the corner, there was a big circle of material floating on the water. I said to Bob, "I wonder what that is." So [414] I waded in and picked up a handful of it, and I thought it was mustard pods, and Bob looked at it and he said, "That is radish pods." That had floated in here and was in evidence all along this levee 2.

As we got up close to our blind, there is about five or six inches of Bermuda grass all over those ponds and there is a cow pasture where there had been cattle until a few days before the season, and there was a few kernels of grain in the grass, and there was this radish pods and chaff that floated in the water along the edge of the pond.

It was probably, oh, 15 or 20 minutes of 12:00, and the shooting season started at 12:00, so we threw out a few decoys on the water on each side of the pond here. At 12:00 o'clock we started shooting. Well, there was thousands of birds in the air, and we were just picking big birds. We usually try to get

(Testimony of Edwin L. Carty)

the bull sprigs. That is the male sprig, which is the best eating duck. The limit being 5, we are going to get the good ducks, and not teal and widgeons and the smaller ducks. In about an hour, we had our limit. We counted our 10 birds and we picked them up.

Then Bob and I proceeded back to the cook house the way we came out. We went here to our little wagon, that cook wagon where we left our decoys, and we put them in the sack. We carry them on our shoulder with our gun coats. Then we proceeded to the yard where Jack Bedwell was waiting, and one [415] of the first things I said to Jack was, "You know, those beans out there look bad. I know ducks won't eat them, I know that from past experience, but they should be covered up." He evaded answering. He did not say anything.

Then I said, "Check my ducks," which he did, and I showed him my duck stamp and everything.

I said, "Check everybody that comes off. They know what the regulations are and they know how many they are allowed to get and if anybody is over the bag limit, just arrest them. There is no argument about it, because everybody knows what the law is. Five ducks is the limit."

Bob Maulhardt had his car parked here and Bob drove up the road to where we were, and I said, "Check Bob," and so he went to Bob's car that his ducks were in.

Then in the meantime Mr. McCormick and one of the Douds came in. Usually, when we are through

(Testimony of Edwin L. Carty)

shooting, we get off the marsh so that we don't interfere with the other fellows who are shooting. So they came in and they had their ducks with them.

Then I said, "You know, all you boys are welcome to hunt any time you want to here." That has been understanding up there all the time. I belong to other clubs there, and the wardens are allowed to shoot any time they want to on any of the clubs.

Then McCormick said, "You can use my gun, if you want [416] to."

I was leaving for San Francisco the next day, because we had a Fish and Game Commission meeting coming up, and I informed him about the condition of the ducks, the number of ducks around the place, and we had an informal discussion there for four or five minutes, and then I put my ducks in the car and went on home.

Q. I believe you stated that you noticed these beans. I am going to show you Government's Exhibit 8, which has heretofore been introduced in evidence, and, directing your attention to that, I will ask you if that refreshes your recollection as to what that represents.

A. That is right. Those are the beans on the south road in the west corner. They run up from about levee 1 to between levee 2, and you see how it ended there. They dump them out there in a truck and this is cow manure you see over there. That is some beans there. I didn't see any grain there.



(Testimony of Edwin L. Carty)

There was these pods and there may have been grain there, but there was no four or five bucketsful.

You see the birds in the picture and there are 800 mud hens that are there all the time. When the shooting starts, the ducks take off, but the mud hens just get around here on the edges when the shooting starts, and when we leave, they go back in. They don't leave the ponds.

The grain, if there has been grain there, was picked out. [417] The fact that the mustard pods were along the road and the sticks and trash, show there was some grain put out there, because they throw it out with a seeder when they go along, and they go out here and throw it and make a circle around, and then they go back and down the middle road, and they throw the grain on that side. That is why there was some grain in the Bermuda grass that the ducks and mud hens couldn't find. That is probably the reason it was left there.

There was nothing on this side up here, because here is a big field of peppers. This is all peppers in here, and we had been warned that we didn't want the mud hens to pick holes in the peppers. That was the reason the feed was put on this side to keep the mud hens and birds on the other side, the south side. Here is where they came around with feed, but not in this area at all. There wasn't anything put there at any time. There was forty 90-pound sacks put out in this area some 10 days before.

Q. Having previously shown government's coun-

(Testimony of Edwin L. Carty)

sel Defendant's Exhibit I for identification, I ask you to look at that, Mayor Carty, and tell us whether or not you have seen any of that before.

A. This is a regular run, the way it comes out of the sacks. There was a half a sack in my car that happened to be left there. There was 80 sacks we bought, and there was one [418] sack that the boy wanted to feed his chickens with on the ranch, and that is the reason we had this half a sack left. He had already fed half of it.

We paid \$1.75 for it. It was very poor quality, very poor. You can get it for anywhere from \$1.75 to \$5.00 a hundred-pound sack or a 90-pound sack. The reason we got it is that if the beans were good duck feed, we would never buy grain and pay any \$4.00 or \$5.00 a sack for it when we can get the beans for nothing, because all of us boys are ranchers and we have lots of that stuff around. None of the other clubs would use grain, either, if the ducks would eat the beans, because for 10 or 12 dollars a ton, you can get all the beans you want, the culls and things.

Q. Further directing your attention to Defendant's Exhibit I for identification, you mentioned earlier in your testimony that you saw a good deal of radish and mustard seed and chaff. Do you see anything like that in this Defendant's Exhibit I?

A. That's right. It is very evident. It is very evident that the pods are of wild radish. With the dry farming that we are doing now, that gets start and it spreads so much that a lot of the grain fields

(Testimony of Edwin L. Carty)

up there are practically all full of wild radish, which makes it very poor quality, and it is very expensive to clean it out. If you would run that through a cleaner, it would cost a dollar or so a [419] sack to clean it. I have been a rancher all my life, until the last few years, and I know what I am talking about.

Q. Directing your attention to Government's Exhibit 10, which is identified as grain picked up on the Santa Clara Preserve, do you see any difference between that grain and this?

A. Yes. Evidently, they didn't pick up the trash or the pods that are in this that they threw out.

Q. I believe you testified you noticed some of this trash, as you refer to it, mustard seed and wild radish, and so on, floating on the edge of the pond, you had gone down into the pond and scooped up some of it, and so you are able to identify it?

A. Yes. I went all along there, and there was these radish pods, and so I said that it looked like mustard, and Bob picked up a handful of it and he said, "No, that is wild radish," and I agreed with him when I looked at it closer, but the mustard pod is a lot like that. This wild radish is very prevalent in the grain fields in poor years, where you get a poor stand, and that is just due to lack of rainfall.

Mr. Irwin: I offer Defendant's Exhibit I marked for identification in evidence. [420]



(Testimony of Edwin L. Carty)

(The photograph referred to was received in evidence and marked Defendant's Exhibit I.)

Q. (By Mr. Irwin): Now, directing your attention to the 22nd day of October, 1949, you went to the Santa Clara Game Club on that day, did you?

A. That is right. I had a guest coming up to hunt with me, a Mr. Stevenson from Santa Monica, that morning, and I was leaving for San Francisco, but due to the fact that I had a guest, I told him to come to the house about 4:00 o'clock and have breakfast, and then we would proceed to the club.

We drove down there about 5:00 o'clock. Shooting time that morning, I believe, was about 5:34. We had our breakfast and proceeded down to the club to the cook wagon, where we drew for our blind.

All the fellows gathered there, probably a half hour before shooting time, and I was successful in getting a blind that——

Q. Will you use the big exhibit there, Defendant's Exhibit A?

A. I got blind 11 and 12, which is one of the best blinds in the club, due to the fact that the ducks congregate down here. You can see these ditches right here and here, and here is fresh water there, the irrigation stand lines, and the heads are right here, where you open it up and let the fresh water in. The ducks smell the fresh water, and that is where they come in, and usually you can get your

(Testimony of Edwin L. Carty)

ducks a lot quicker, and you get the bigger ducks, too, the sprigs.

When I drew 11 and 12, I told Steve, "We will take my car and drive around Gonzales Road and come in on the road right there," and so we came in, drove right up to here, and I pulled off the side of the road and parked my car and got the decoys and gun shells, and proceeded over to the fence. The gate was all wired up, so we climbed over the fence and walked to this levee. The dike there is No. 4, dike No. 4.

These ponds we have dried up on account of the water getting into the fields and injuring the crops in the field right over here, and we don't want to do that, so we keep the water away from the road for that reason.

These are two good ponds. You will see they are full of water right up to the corner. This blind sets in there probably 100 yards from the south road and probably 20 feet from the dike.

Q. You don't mean 100 feet?

A. No, 100 yards. We put out our decoys. It was still dark then, just kind of breaking dawn, because you shoot a half an hour before sunrise. We put the decoys on both sides of us. There were thousands of birds in the air. There are two clubs over here, and here is one here, and then a big [422] one across the valley, and when the shooting time starts, all the birds go into the air, and they are moving across this area until they get out over

(Testimony of Edwin L. Carty)

the ocean, and then they stay there the rest of the day, except when it is rough and windy.

So we counted our ducks as we shot them, and I would say an hour went by, and the last bird I shot, a bull sprig, fell off in this field here, so I said to Steve, "We have got our bag limit and we might just as well go in and let some of the other boys move into our blind where there is better shooting."

I said, "You go and pick up on the west side and I will pick up on the east side, and I will get the ducks that went in the field."

So I proceeded across the field and picked up two ducks as I came, and right across here is the gate and Bud Elder and John Spicer drove up, and I walked over and shook hands with Spicer and Bud Elder was there and he was very nervous, quite nervous, and he said, "I warned you, I warned you, I warned you." He said that at least five times.

I said, "Bud, what did you warn me?"

He said, "I warned you about baiting last year."

I said, "What do you mean? Do you mean the time Bud Spicer called me up at 10:00 o'clock and said, 'Your club is closed?' "

I said, "Closed? Why?" [423]

He said, "You know those seven sacks"—we had the cook wagon right in here that year. He said, "You know those seven sacks left over from the feeding in the middle of the season that had been rained on and swelled up?" He said, "I talked to the Mexican last night and he said he had dumped those seven sacks out."



(Testimony of Edwin L. Carty)

John said he asked the Mexican fellow—he could speak very little English—who it was that dumped them out, or I mean who it was that told him to dump them out, and he said Jimmy McCormick.

Q. Excuse me, Mr. Carty——

Mr. Johnson: I don't think it is quite clear to the jury and the court what he is talking about, what time this is.

\* \* \*

Mr. Irwin: As I understand it, the Mayor is answering Mr. Elder's question about the warning.

The Witness: That is right.

Mr. Irwin: An event that happened in 1948, which you have had your witnesses refer to without explaining it.

Mr. Johnson: That's right, but I just want to know what [424] date this is. I know it now and I thank you very much.

Q. (By Mr. Irwin): Go ahead.

A. So John Spicer said, "Bud Elder will be by this afternoon and we will stop in at your office."

So I says, "In the meantime, I will check with Jimmy McCormick and see what it is all about."

So I got Jimmy McCormick on the phone, who kind of keeps an eye on the club, and his mother is a McGrath and farms all this land, and he said, "Those were spoiled. They were rained on and there were thousands of ducks coming in there and they were all hungry."

We don't shoot every day out at the club there. There is one cub in the neighborhood that shoots

(Testimony of Edwin L. Carty)

twice a week and another shoots four times a week. All we take is 10 birds a week, five each time, and they take 20.

He said, "I told him to dump them out tomorrow morning and that feed would be all gone because we don't shoot until Sunday."

That would be from Thursday to Sunday.

Well; that was the answer, and so I was waiting for them, but they never showed up that afternoon at all, Bud Elder and Spicer, at my office.

Q. You are discussing there what you said to Elder in reply to his statement to you that he had warned you? You are recalling with him what had happened, are you? [425]

I said, "That is the warning that you consider was the warning that you gave me last year as far as baiting the ponds is concerned?"

Of course, in my opinion, there was no question it was a violation. I know you are not supposed to bait during the season.

Q. That was last year, in the 1948 season?

A. That's right. So we didn't shoot until probably three days later, and then Bud says to me, "You know, the only reason I let you go back to shooting last year is you were going to have a priest as a guest."

I said, "I have never had a priest as a guest."

That was the statement he made to me.

I said, "Our boys quit 10 days ago feeding on the instructions that Hap Maxwell got from Edgerton,

(Testimony of Edwin L. Carty.)

that all the clubs were quitting approximately 10 days before the season feeding."

So I could see he was still very nervous and there was no use arguing, but I said, "I would like to know where the responsibility of our State Wardens starts and stops. We have got 166 of them and they enforce about 90 per cent of the migratory bird laws," and I said, "I guess we will have to go to court. What else can I do?" I said, "Why didn't you arrest us yesterday? You let us shoot today."

I knew Jimmy McCormick had asked Getman to check the [426] club so I felt everything was all right on the club. I was in Ojai the day Jimmy McCormick talked to him, because my son was playing football on the Villanova team, and Mr. Getman has a son in Villanova, although I was on the bank and did not talk to him but Jimmy was talking to him.

On opening day, there was wardens lined up all around here. There was a couple of cars in here, there were a couple of wardens cruising around on this road here. There was evidence of wardens around there all the time, and I have been checked more in the last two years than I have in 40 years.

Here two years ago, John Spicer and Edgerton had evidently been watching me shoot ducks right here on this pond. That time, I didn't go in there until 10:00 o'clock, and they came around here, and they met me at the gate. The limit was four, and I laid my coat out and everything, because I knew they thought I had over the limit in my bag,



(Testimony of Edwin L. Carty.)

so I asked them to check, and they checked the ducks, and I said, "Check my decoy bag and everything." They never checked anybody else at the club but me.

That morning they were in the trees over here, and they even were in the house and asked Mrs. McGrath if they could hide—not hide, but park behind these trees and watch the club. They were doing that, they were standing there and watching the hunters with binoculars, and Mrs. McGrath said, "What are you two doing there? Are you trying to spy on my [427] husband there?"

He was shooting on that opening day then, too. If you are that close and using high-powered glasses, you can see everything that goes on. You can even see the beans out there when you will use those glasses, the white reflected from them.

So I went back then after this discussion and cut across here, and I yelled to the fellows to stop shooting, that Bud Elder and Spicer had said we were violating the Migratory Bird Act by feeding ducks, shooting over baited ponds.

So they came up here, four or five of them came in there, and so we brought up all the decoys and picked up our ducks and proceeded on out this way.

Stevenson and I got in the car and were were at the gate here, and Spicer—no, Spicer had gone then. There were the three other wardens, there, Edgerton, Ernie Bedwell, and his father Jack. They were waiting here for us, right here.

I said, "Well, you honor me by having the whole

(Testimony of Edwin L. Carty.)

force present. Here are five wardens, counting the other two fellows.”

So we handed our ducks and decoys and our coats and all our guns and stuff over this fence, and when we got over there, my car was sitting here, and so I went on over to my car and Edgerton came over to my car and he says, “Mr. Carty, Bud wants me to take your ducks.” He was very apologetic about it. [428] He says, “Mr. Carty we could close all the clubs up technically. They all have a little grain on them.”

I said, “I don’t know about that, but when they get that technical, that they are closing it for a few handfuls of grain”——

Along this road, when I came out, there was the mustard pods and stacks of trash all along here. Wherever I walked, you would find that. They ate the grain and left the pods there, and when you first glanced at them, it did look like feed. I didn’t know until I picked it up to look at it, and I couldn’t figure what the devil that was.

So I took the ducks off my strap. We have a strap that we carry the ducks with. I handed it to them and they went over here then. They were putting tags around the necks and putting our names and identification tags on them.

Then Steve and I—Steve had left his car in the yard, and there were several of the other boys came along, and one of them had his car down here. We drove around into the yard and Steve got into his car, and then we left and went on home. I had to go

(Testimony of Edwin L. Carty)

to my office and get ready to leave for San Francisco.

Q. Now, may I direct your attention to a statement made by one of the other witnesses for the prosecution, I forget which one, to the effect that you were supposed to have said not to arrest you, to arrest the club. Did you make [429] that statement?

A. No, I did not, and I would not, because I know you can't arrest a club. You have got to arrest people. That would be silly on the face of it.

Q. Directing your attention to Government's Exhibit 4, which was identified as having been at the approximate intersection of the fourth dike and the south river road, Mr. Johnson stated that that was about 20 feet from the blind where you were shooting. Did you see any condition like that at the intersection of dike 4 and the south river road?

A. No, I did not, and he couldn't identify that as grain. I think if the jurors would see that, they would know what I am talking about, what I mean by radish pods, how they look.

Q. You are referring to Defendant's Exhibit I?

A. That's right. If there was so much grain, like they say there was, they would certainly have more pictures than that to show. There could be one or two pounds of grain or trash like that thrown out in here and the mud hens and ducks pick out the grain. I wouldn't bet my life that is all grain there. There might be some grain, but I certainly



(Testimony of Edwin L. Carty)

never saw any grain here. I doubt if that is levee 4, because on levee 4, that is a very bare levee. The other levees have five or six inches of Bermuda grass, but this one [430] doesn't have that. It is just like a lawn that has been mowed. There was no grass there. It was very clean. By the levee on that dike here, there was some kernels of grain in that deep Bermuda grass, but mostly it was this kind of stuff.

Q. As you see, in this Defendant's Exhibit I, you can see some kernels of grain mixed up with chaff and radish seed and this is the way——

A. This is the way it was when it was down there. That is why we got it for \$1.75. It has never been recleaned. [431]

\* \* \*

Direct Examination  
(Continued)

Q. (By Mr. Irwin): I have previously shown to Mr. Johnson Exhibits I, J, and K for identification, Mr. Carty. I show them to you now, sir, and ask you first as to the Defendants' Exhibit I for identification, what that represents.

A. This is dike 4, looking out from the 11 and 12 blind.

Q. I correct my last question, Mr. Carty, to make [434] that Exhibit L for identification. You say this Exhibit L for identification is what?

A. That is looking out from blind 11 and 12. My car is on the south road there.

(Testimony of Edwin L. Carty)

Q. When you say from the blind, I see two large circular discs that appear to be on a concrete base there. What are they?

A. Those are 36-inch concrete tile blinds with the caps that we put on top of the blind.

Q. Are those, then, what we have been referring to and hearing so much about as blinds?

A. That's right, and it is 96 yards from here to the road, looking south.

Q. You say that is dike 4?

A. That's right, and it has got a little clover on it that has come up since.

Q. I show you Defendants' Exhibit J for identification. What is that, sir?

A. That is looking north from the south road, and my son is standing on top of the blind.

Q. That is also dike 4?

A. That is right. The water had been running over this dike, so they took it kind of up to the blind to fill it up so the water wouldn't run from this pond to this pond.

Q. Now, I show you Defendants' Exhibit K for identification. [435] What is that, sir?

A. K is from the middle road looking south to the south road, which is about 200 yards. It is 196, to be exact. One hundred yards from the middle road to the blind, and then 96 from the blind to the south road.

Q. Those measurements you gave us were taken under your direction?      A. That is right.

(Testimony of Edwin L. Carty)

Mr. Johnson: Where was Exhibit K taken, Mr. Carty, from what dike? Would you like to see it?

\* \* \*

The Witness: That is dike 4. That is in the middle road looking toward the south road.

\* \* \*

(The photographs were received in evidence and marked Defendants' Exhibits J, K, and L.)

Mr. Irwin: One other thing. I have shown this to government counsel, may it please your Honor. This does not properly belong to this witness, but should be considered in connection with Mr. Maxwell's testimony. He has stated he will stipulate with me that the exhibit I am about to have marked——

\* \* \*

(The document referred to was received in evidence and marked Defendants' Exhibit M.)

\* \* \*

### Cross-Examination

By Mr. Johnson:

Q. Mr. Carty, how long have you been hunting migratory waterfowl?

A. Oh, practically all my life, since I was big enough to carry a gun, eight or 10 years old. [437]

Q. That would be how long, approximately?

A. I am 52 now. About 41, 42 years.

Q. On the 21st of October, I think you stated that you were in the blind on cross dike No. 2, was it?

A. Yes, that is right.



(Testimony of Edwin L. Carty)

Q. I am looking for Government's Exhibit No. 1.

A. It is right under here.

Q. Could you please show me where that would be on cross dike No. 2?

A. The way you have got it numbered, it would be this one here.

Q. How far up the cross dike would it.

A. About in here.

Q. How many yards this side of the middle dike would you say that is, that is south of the middle dike?

A. It isn't very far. These dikes are 200 yards long. Probably 25 yards or so.

Q. Approximately 25 yards south of the middle dike. Thank you.

Now, you say that on the morning of the 21st, you came out to the club with Mr. Maulhardt, was it?

A. No. I came by myself, but Mr. Maulhardt was there.

Q. You saw some beans there?

A. You mean I came to the club by myself, but I went [438] to shoot with Mr. Maulhardt. In other words, we double up when we draw.

Q. But you saw some lima beans on the premises on the 21st?

A. That is when we crossed the road there going up to dike 2.

Q. And later on you saw Mr. Jack Bedwell on the 21st?

A. That is right, when we came out in the yard.

(Testimony of Edwin L. Carty)

Q. To both of them, you made the remark that the beans looked bad? A. That's right.

Q. Why did they look bad? Why did you think they looked bad?

A. Because they showed up in that road and they are not duck feed, I know from past experience, because I have had a duck club of my own at one time.

Q. If they aren't duck feed, why would they look bad?

A. The fact that somebody might think that they are feed.

Q. In other words, you think there might be some doubt as to whether they are duck feed or not?

A. That's right.

Q. So you are not positive they are not duck feed? [439]

A. I am positive from past experience. I have had them on my Ocean View Ranch years ago. I dumped them out and they just rotted there and the ducks didn't eat them.

Q. But you realized that other people may disagree with you on this particular matter?

A. They might think they are feed, just like it is being contended now.

Q. You also stated near your duck blind, I assume that was the one on cross dike 2, approximately 25 yards of the middle dike, as you have testified, you noticed a few kernels of grain in the grass. A. That's right, in the Bermuda grass.

Q. How many would a few be?

(Testimony of Edwin L. Carty)

A. Well, you could take a handful and spill it along over 15 or 20 yards, and you would have kernels every five or six inches, if you looked down into the grass very closely.

Q. Showing you Government's Exhibit No. 2, which, according to some testimony in this case, represents grain, and assuming that it is the grain, would you call that a few grains?

A. That would be about four or five pounds of grain.

Q. Would you call it a few grains?

A. No.

Q. What would you call it?

A. That would be four or five pounds of grain, I would [440] say.

Q. Assuming again, under the premises I have stated to you, that that is grain, would you say that that is a violation of the law, as you understand it, in regard to baiting?

A. If that was on 40 acres of land, there would be a question in my mind, if that is all the grain there was, four or five. Where is that supposed to be?

Q. I am not sure. I think it is at cross dike No. 4. I could be wrong.

A. That could never be at 4, because there is no water here. This pond is full of water.

Q. But you think that would be a violation, at least, in that area, if that is grain?

A. If that is grain.

Q. Now, you also stated that on the south side of



(Testimony of Edwin L. Carty.)

the premises feed was put out to keep the mud hens from interfering with your hunting?

A. Did I say——

Q. Is that what you said?           A. When?

Q. In your testimony on Friday last.

A. I don't remember saying anything about that.

Q. What was the feed put out for?

A. Feed is put out for ducks.

Q. But what was your testimony with regard to mud hens? [441]

A. I said there was four or five thousand ducks and about 800 mud hens in the area at noon when we went out to shoot.

Q. Well, I may have got my directions wrong. What you testified to was that the reason the feed was put out on this side was to keep the mud hens and birds on the other side, the south side?

A. Out of the pepper field, the big pepper field to the north, because the people who have the peppers in this big field were afraid that the mud hens would pick holes in their pepper.

Q. What kind of feed was this that was put out for that purpose?           A. The grain was put out.

Q. That is the grain that has been introduced in evidence as Defendants' Exhibit I?

A. That is right.

Q. In the box here?           A. That is right.

Q. With the pods in it?

A. That is right.

Q. What kind of sacks was this feed contained in?           A. Regular grain sacks.

(Testimony of Edwin L. Carty.)

Q. How big?

A. They run about 110 in good grain, and about 90 pounds [442] could be in the same sack.

Q. How big are the sacks in size?

A. They are about that wide and about that high.

Q. You say they run about 110. What do you mean?

A. If it is good grain, heavy grain, it will run about 108, 110 pounds. Light grain, threshed grain, will run less in weight.

Q. This would be lighter than ordinary grain, wouldn't it?      A. That is right.

Q. This was, then, the barley with trash and pods in it, as you have testified about putting out?

A. That is right.

Q. Of course, you recognize that mud hens are also migratory birds, don't you?

A. That is right.

Q. So that such feed put out, no matter for what purpose, would be a violation if you were shooting over it during the open season?

A. Well, if there was an unreasonable amount, I would say yes.

Q. If you were shooting over an area baited with this feed, it would be a violation?

A. It is a matter of opinion what would be—if there is a few grains around, I wouldn't consider it a violation. [443]

Q. You don't think that is a matter of opinion, do you? That is a matter of law, isn't it?

(Testimony of Edwin L. Carty.)

A. I don't know.

\* \* \*

Q. (By Mr. Johnson): You are familiar with the regulations, state and federal, concerning shooting and taking of ducks and geese, are you not?

A. As far as I can keep up with. It has never been clarified for years. That is the big argument we have.

Q. You knew you could never shoot over any ponds or area as long as feed was on them, didn't you?

A. Not necessarily. You can have feed on the pond. You can raise all the feed you want, as long as you don't mow it down. You can flood rice and barley, and it is still within the regulations.

Q. That is true, but I am talking about placing feed out. You knew as long as such feed was placed out on the area you couldn't shoot during the open season? [444]

A. That's right, if there was any quantity.

Q. If on the 21st of October, there was feed out there, it was unlawful, and you knew it, to shoot?

A. The few kernels of grain I saw around there, one handful scattered through the grass.

Q. We will get to that in just a moment.

A. I wouldn't consider that a violation or any intent of violating any law. [445]

\* \* \*

Q. (By Mr. Johnson): Now, showing you Government's Exhibit No. 10, which purports to be a



(Testimony of Edwin L. Carty.)

sample of barley taken from the premises of the Santa Clara Hunting Club on the 21st of October, would you say that is the barley that was put out, as you testified, in forty-one 90-pound sacks?

\* \* \*

A. If it is, it is certainly cleaner. There are very [447] few pods, if any, in here, or radish seeds, and the dirt in there, they probably didn't gather up the radish pods and the trash with it. That is fairly clean barley.

Q. Is that a radish pod, as you understand it, that little purple thing in there?

A. Yes, that is one.

Q. You say there were more of those in the barley than that?      A. Yes.

Q. You don't think the game wardens strained the stuff before they brought it in here?

A. Not necessarily.

Q. You don't think they would have the stuff strained before they took it as a sample?

A. I don't know what they would do. They have done other things.

Q. Referring to your testimony with respect to the 22nd of October, you state you were in a blind on cross dike No. 4?      A. That's right.

Q. Would that be a concrete blind which shows in Defendants' Exhibit L?      A. Yes, 11 and 12.

Q. And that is how far from the south road?

A. Ninety-six yards. [448]

Q. You stated in your direct testimony that Mr.

(Testimony of Edwin L. Carty.)

Elder told you you had been warned before. As a matter of fact, that was true, you had been warned before, hadn't you?

A. I wouldn't call that a warning the year before. In other words, as I explained, he kept saying, "I warned you, I warned you, I warned you," and I referred him back to if he considered was a warning was the year before when the seven sacks of spoiled barley had been dumped out.

Q. As a matter of fact, on January 1, 1948, the club was then covered with lima beans and barley, was it not?

A. There were rotten lima beans on the middle road that were never eaten by the ducks.

Q. But you admitted in your testimony that was a violation on Friday?

A. Yes, as far as dumping it during the season, dumping seven sacks out, although they never shot over the grain.

Q. So that if it was a violation and if, as you testified, you did discuss it with Mr. Elder and Mr. Spicer over the phone, and Mr. Elder agreed to let you shoot the last two days of the season, that would not be unreasonable to call that a warning, would it?

A. Mr. Elder wasn't—Spicer is the one I talked with about that grain. He is the one talked about the club had been closed on that morning, and when I got back from San Francisco and I asked why, he said, "You know, those seven sacks of spoiled barley laid by the cook wagon, and I went by there last

(Testimony of Edwin L. Carty.)

night and they were gone, and I asked the Mexican caretaker what happened to them, and he said Jimmy McCormick had told him to dump them out, that there was a lot of ducks there and they would eat it up in a matter of a few hours, and they didn't shoot until the next Sunday.

Q. Referring to that period and that hunting season, isn't it true on the 3rd of January you had a telephone conversation with Mr. Elder in this regard?       A. When?

Q. On or about the 3rd of January.

A. Two or three days afterwards.

Q. You phoned Mr. Elder?

A. I don't know whether I phoned him or he phoned me.

Q. Isn't it true at that time you said to Elder that on account of your position as a member of the Game Commission, the other club members were looking to you to straighten out the matter about baiting?

A. No, I didn't say about baiting.

Q. Isn't it true you then said you had been told that a 72-hour period with regard to feeding was all right?

A. I told him that, I raised the question at the November 5th or 6th meeting in San Francisco, I raised the question, can you feed ducks and how long?

That is when Ralph Scott, our attorney, who is from the [450] Attorney-General's office and does all the Fish and Game work, said he would check into it.



(Testimony of Edwin L. Carty.)

So at noon time, after lunch, he came back in and said, "There is nothing in that regulation that forbids you feeding of ducks up to the opening of the season." He said, "within a reasonable time."

I said, "Well, what would be a reasonable time?"

And he said, "possibly 72 hours, three days, before."

Q. Didn't you tell Mr. Elder during this phone conversation that County Game Warden Jack White had so informed you?

A. No, no, never. I think Inspector Macklin was at the same meeting with me when that question was raised, and that is where it came back and was passed out there by those who called him up. He quoted the conversation I had and the rest of the commissioners with Ralph Scott, our attorney.

Q. Don't you recall that Mr. Elder during that conversation, after the discussion of the 72-hour business, told you what the exacting wording of the law was?

A. No. He never has and no one else in the Wildlife Service. I have tried to get that clarified for years. They always keep it as though it is a mystery. I have argued with them 10 years.

Q. You mean you have never seen the regulations?

A. I have seen the regulations, but not the interpretation [451] from the Fish and Wildlife. Some of the boys up there quit five days before and in the Valley there, they say 10 days. Really, nobody has

(Testimony of Edwin L. Carty.)

any definite idea of what the regulation is interpreted as.

Q. Do you recall at that time saying that the club had been cleaned up, barley and lima beans, and that you asked them if it was okay to shoot the last two days of the season, because you had important guests coming down? Did you say that?

A. No, I did not. He raised the question. He said I had a priest. That was the morning of the 22nd. He said, "The only reason I let you go back to shoot is because you had a priest coming as a guest."

I have never had a priest as a guest.

Q. Did you tell him the club had been cleaned up of lima beans and barley?

A. No, I did not, because I did not know that. The lima beans, they rotted in the road just there off of the dike.

Q. During that conversation, did not Mr. Elder ask you to put your statement in writing with regard to the 72-hour period, and you stated that you couldn't do so because of your position, but that you would have James McCormick write the letter?

A. No, I did not. There was no reason for my saying [452] that. I explained how I got the information and when and who I got it from.

\* \* \*

Q. (By Mr. Johnson): Did you ever ask James McCormick to write such a letter?

A. No, I did not.

Q. Would the letter from Mr. Elder, Govern-

(Testimony of Edwin L. Carty.)

ment's Exhibit No. 15, concern a subject which you discussed during that telephone conversation?

A. I told Mr. Elder, and I told John Spicer, in other words, that Jimmy McCormick was the manager and the one that had evidently ordered the beans and grain put out.

\* \* \*

Q. (By Mr. Johnson): Would you say in general that this letter concerns a subject which was the topic of conversation between you and Mr. Elder during this particular phone call?

A. That is right.

Q. What would say, then, that you asked Mr. McCormick to reply to this letter?

A. No. I don't remember seeing that letter before. That is the first time I remember of ever reading that letter.

Q. But you did give Mr. Elder the name of Mr. McCormick to contact as the one with regard to the facts of the recent baiting of the Santa Clara River Game Preserve? [454]

A. I might have given him Jimmy McCormick's name.

Q. Incidentally, in your direct testimony, you stated that 166 of the State Game Wardens, in your opinion, were enforcing 90 per cent of the Migratory Bird Laws. You don't mean to be criticizing that, since they are Deputy Federal Wardens, also, do you?

A. No, I do not.

Q. As a matter of fact, as a member of the State



(Testimony of Edwin L. Carty.)

Game and Fish Commission, you are glad to see them enforce the law?           A. That is right.

Q. You also stated you have been checked more in the last three years than in the previous 40 years?

A. That's right.

Q. Would that be because of the previous violations, which you admitted, at the Santa Clara River Game Preserve?

A. No. I was checked before then. I was talking about John Spicer and Edgerton checking me. That was before this time.

Q. But you approve of that enforcement of the law, don't you?

A. That's right. I tell the boys that if anybody has got over the limit, they have got to be cited.

Q. And if anyone is shooting over a baited area, you approve of their making a citation in that regard? [455]

A. Within reason. If it is not a technical violation.

Q. What is a technical violation, in your opinion?

A. I believe a technical violation is if there is a few grains left on a club after the legal feeding up to the day before. But Elder made that statement himself; legally you can feed up to the day before, on our first meeting after this day.

Q. Do you remember the conversation you referred to in your direct examination between you and Mr. Ernest Bedwell at the time you came off the premises of the club on October 2nd?

A. That's right.

(Testimony of Edwin L. Carty.)

Q. Do you recall saying to Mr. Bedwell that it was a technical violation, and his answer, "Ed, do you infer this is a technical violation?"

A. On the 22nd?

Q. Yes.

A. He never said a word about it being a violation or anything. I said about the beans, that the beans looked bad there and they ought to be covered over. Now, why——

Q. I am referring to——

Mr. Irwin: Just a minute. Let him finish.

Mr. Johnson: He is talking about Jack Bedwell.

The Witness: That's right. I am talking about the 21st. [456]

Q. (By Mr. Irwin): I am talking about the 22nd, Mr. Carty.

A. When we came up to the fence there and handed over our ducks and our guns and coats and things, decoys, over the fence, I said, "You honor me with having the whole patrol here." There were three wardens there and two others, five wardens, checking me. There wasn't very much said when I walked over to them at all, as far as I am concerned. I don't remember saying anything to him about a technical violation.

Q. Isn't it true that you did——

A. I did talk to Edgerton. He is the one.

Q. Isn't it true you said to Mr. Ernest Bedwell on that occasion, "Ernie, if you wanted to be technical, you could pick up all the clubs in the area

(Testimony of Edwin L. Carty.)

for baiting,” and Ernie replied, “Ed, are you inferring this is a technical violation?”

A. No, I don’t remember saying that.

Q. You don’t remember saying that?

A. No.

Q. But you think a technical violation is okay, right?

A. Well, that is a matter of opinion. I think——

Q. But that is your opinion? [457]

\* \* \*

The Witness: A reasonable amount. If there are two or three buckets of grain over 40 acres of land where the ducks and mudhens could find them, I wouldn’t call it——

Q. (By Mr. Johnson): Handing you Government’s Exhibits 5, 6, 7, 8, and also 2, 3, and 9—excuse me for jumping around so much with regard to the numbers—now, looking over those pictures—we will take No. 4, also—there has been testimony, as you realize, to the effect that lima beans are feed. Assuming that lima beans are feed——

A. I won’t agree to that. [458]

\* \* \*

Q. Referring to Government’s Exhibit No. 2, I think that is the one, or perhaps it is Government’s Exhibit No. 4, I think that is the one which you stated you didn’t think counsel for the government could identify as grain. Do you remember which one it was, whether it was 4 or 2?

A. I was questioning the location of the dike—this is the one I had, on dike 4.



(Testimony of Edwin L. Carty.)

The Witness: This is the picture, No. 4, that it was stated that this grain, if it is grain, was on dike 4. I contend that couldn't be on dike 4, because there wasn't that [460] type of ground on dike 4.

Q. (By Mr. Johnson): I appreciate that but that is not quite responsive. In other words, you stated in one of these scenes you didn't think anybody could identify what was said to be grain, and which the picture purports to depict, you said you didn't think anyone could identify this grain. Is this the one?

A. This is the only picture that was brought up.

Q. All right. Referring to Government's Exhibit No. 2, then, would you say that can be identified as grain or not?      A. That could be pods.

Q. Do you see any pods there?

Mr. Irwin: Just a minute. Let him finish his answer.

The Witness: Yes, all this stuff in here.

Q. (By Mr. Johnson): The white stuff is pods?

A. That's right. In other words, I could throw a lot of radish pods and trash out there, and it wouldn't look any different than that.

Q. In your opinion, that is trash and radish pods, not grain?

A. And this is supposed to be at dike 4.

Q. But in your opinion, is this trash and radish pods, not grain?      A. It could be. [461]

Q. Could you give me a yes or no answer, please?

A. In my opinion, I wouldn't know, unless I actually saw it.

(Testimony of Edwin L. Carty.)

Q. Looking at the picture?

A. I think it is radish pods and trash.

Q. You don't think there is any grain there?

A. I don't know, but I know that isn't at the end of dike 4, because there is no water in this pond here.

Q. You say you have been a rancher a long time, Mr. Carty?

A. Well, my boyhood has been spent on the farm and my education has been ranching.

Q. You raised cattle?

A. I raised some cattle.

Q. Was that in Ventura County?

A. That's right.

\* \* \*

Q. Did you ever or would you feed cattle whole lima [462] beans like that?

A. No, not as a regular diet.

Q. Pardon?

A. Not as a regular diet. They will eat a little beans and hogfeed. What we feed them, though——

Q. But you were talking about cattle. You stated, I think, that these lima beans had been put out on the premises of the club for the purpose of feeding cattle? A. I did not say that.

Q. I thought you said that. But you wouldn't feed these to cattle?

A. Not as a regular diet. The cattle would eat some of them, but they are certainly not cattle feed, any more than duck feed.

(Testimony of Edwin L. Carty.)

Q. In your experience as a rancher, would cattle eat them from the bare ground?

A. They will lip them up.

Q. That is lima beans, whole, such as I just showed you?      A. That is right.

Q. When were the lima beans put out?

A. They tell me about the 8th.

Q. About the 8th?

A. About 8th of October, about two weeks before the season opened. [463]

Q. Do you know why they were put out?

A. I don't know. I think they had the idea that possibly the mudhens might eat them. They had some there in the yard, and they still had some, to keep them out of the peppers.

Q. You realize mudhens are migratory water-fowl?

A. That's right, but they didn't eat them, or they wouldn't have left them.

Q. How many lima beans were put out?

A. 36 sacks, 100-pound sacks, with dirt and trash in them, and the culls.

Q. Would that have been on October 13th at 10:00 a.m. that those were put out?      A. No.

Q. Did you ever tell anyone it was October 13th at 10:00 a.m.?      A. Not the beans, no.

Q. Pardon?

A. Not the beans. The grain, the last of the grain was put out about then, I was told.



(Testimony of Edwin L. Carty.)

Q. When were the lima beans put out, if you can recall the exact date?

A. I believe around the 8th of October.

Q. Around the 8th of October?

A. Yes, and they would have been put up at the center of the road if they thought they were going to be duck feed. [464] They were out on the southwest corner.

Q. Again, who put them out?

A. The workmen there on the ranch. Jimmy McCormick was acting as foreman. He farms that land.

Q. You don't like Mr. Spicer very well, do you?

A. I like Mr. Spicer and have always treated him like a gentleman. I have never put my nose into the feud that has been going on for years there between him and Jack White.

Q. And what about Mr. Edgerton?

A. Yes. He is a gentleman and was the only one that was that morning.

Q. Do you like Mr. White, Jack White?

A. Yes. Jack White is an oldtimer and very active in rod and gun clubs, and keeps very fine public relations. [465]

\* \* \*

Q. As a matter of fact, Mr. Carty, you supported Jack White rather strongly in his bid to keep the County Game Warden job, did you not?

A. No, I did not.

Q. Did you ever discuss County Game Warden White's record with Mr. Macklin?

(Testimony of Edwin L. Carty.)

A. Can I explain the last answer?

Q. Surely. Go ahead.

A. I have always felt it is none of the State's business if a county wants to expend its money for a county warden, that is their business, and I have kept my nose out of that feud.

Q. Mr. White has shot a lot on your club, hasn't he?

A. Yes, he has shot several times a season. He has been invited, like all the rest of the wardens have been.

\* \* \*

Q. (By Mr. Johnson): As a matter of fact, since October 22, you have expressed your opinion that there are too many State Game Wardens in Ventura County, haven't you? [467]

A. Since the——

Q. Since October 22?

A. Compared with the other counties in the State. We have four State and one County warden in our county, and we have got counties like Colusa with millions of ducks and pheasants, and they have got only one warden, some two, some none. There is a poor distribution of wardens in the State.

Q. Did you have Mr. Spicer in mind when you made those remarks?

A. No, because what I had in mind was the fact that here are four or five wardens watching this one little 40-acre club practically every day, sitting there in the afternoon at 3:55, to see that we stop feeding, two carloads sitting right there, practically in the

(Testimony of Edwin L. Carty.)

club, on a private road there, and when they have got that much time, and the other counties need wardens so badly, that is where they should be distributed.

Q. You told Mr. Macklin that since October 22nd?      A. That's right.

Q. In other words, that was the climax, as far as your are concerned?

A. I realized why they had four wardens at \$8,800 apiece in our county, when we only sell \$3,500 worth of licenses.

Q. I think you stated in your direct examination that [468] in your opinion ducks will not eat lima beans?      A. That is right.

A. That's right.

Q. Do you know how close a duck has to be to a lima beans before he can recognize it as a lima bean and decide he does not want it?

A. They will pick grain out of lima beans.

Q. And they will pick at a lima bean like a chicken and, if it is a lima bean, they will drop it, is that correct?

A. The only kind of bean I have ever seen in a duck is a black-eyed bean, and I have cleaned plenty of them.

Q. But you do admit they pick at their food and, if they don't like it, they spit it out?

A. Well, I have watched ducks and chickens pick where you got weevil grain, and they will pick the solid grain and you wonder why they don't pick the other. It was weevil grain.

Q. You know, as a matter of fact, Mr. Carty,



(Testimony of Edwin L. Carty.)

most of the clubs up in that area feed lima beans as a common practice?           A. No, they don't.

Q. Are you against the baiting regulations?

A. I am against it as far as the clarification is. They should clarify it so there isn't all this mystery and the clubs know what they can do and what they can't do. [469]

Q. As a matter of fact, you have spoken against the baiting regulation, haven't you, heretofore?

A. I think the clubs should be advised what is too much duck feed, then, so they can take care of it.

Q. In other words, you are against the philosophy of the baiting regulation?

A. I don't believe in shooting birds over baited ponds like is done in the Middle West, where they trench shoot them, put out corn and popshoot the ducks.

Q. Was your answer yes or no? You have explained it now.           A. As practiced now.

Q. But you do recognize that it is the law at the present time?

A. That's right, it is a regulation. [470]

\* \* \*

### Redirect Examination

By Mr. Irwin:

\* \* \*

Q. I show you Government's Exhibit 2 for identification, Mr. Carty. There has been some evidence offered by government witnesses that that picture

(Testimony of Edwin L. Carty.)

represents the intersection [471] of dike 4 and the south ridge road. Do you recall what the conditions were at the intersection of dike 4 and south ridge road on the 22nd day of October, 1949?

\* \* \*

The Witness: Yes. [472]

Q. (By Mr. Irwin): What were they?

A. This pond here was full of water right down to here on both sides. In this picture, you can see both of these ponds filled up with water right down to the corner and when I came back and crossed it, if there had been material like that there, I would have seen it. That couldn't have been taken on the 22nd, because you will notice in this picture that this pond is all dry. There is no water. The aerial picture shows there is water.

Those are two of the best ponds in the club, and they fill up right down to the south road. When you look at the picture, that is all dry weeds out there. That could have been two or three days before, but it was not that way on the 22nd, or that would show water in this corner.

Q. Government counsel asked you in some detail about mudhens and whether or not they were migratory fowl. In that connection, may I ask you, Mr. Carty, first of all, there were no mudhens shot on either the 21st or the 22nd of October, were there?

A. Not that I know of.

Q. Will you please tell us what is the situation with reference to mudhens as being a target for sportsmen?

(Testimony of Edwin L. Carty.)

A. They are considered a pest on all sportsmen's clubs, because they clean up all the feed that you would want for ducks and as far as food value, I wouldn't eat them, and [473] I don't know many people that do eat them or shoot them for food. They have changed the name and put a bag limit on them to try to get them to hunt mudhens.

### Recross-Examination

By Mr. Johnson:

Q. Just one other thing. You referred to what I think is Defendants' Exhibit A and say that has water in it at the cross dike No. 4.

A. Right here on the diagram.

Q. Of course, you don't mean for the jury to believe that that picture was taken at or about October 22nd, do you?

A. I am saying on that day both of these ponds were full right up to the corner here.

Q. Answer my question, please.

A. No, that was not taken the same day.

Q. When was it taken?

A. I don't know the exact date that that was taken, but shortly after the 22nd.

Q. It has been taken within the last two months, has it not?

A. It was still while the season was on, because we drain the water out after the season is over.



LAWRENCE NUNES

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

\* \* \*

Direct Examination

By Mr. Irwin:

Q. State your full name for the benefit of the ladies and gentlemen of the jury, please.

A. Lawrence Nunes.

Q. Are you superintendent of acreage in Ventura County, of some large acreage in Ventura County?      A. Yes, sir.

Q. For whom do you work?

A. Gentry, Inc.

Q. I show you what has been identified as Defendants' Exhibit A and ask you if you see any of the Gentry lands on that exhibit.

A. This thing is kind of turned around here for me. Let's see here.

Q. Perhaps, rather than to——

A. Oh, this right in here. We farm this and also this field right in here, 250 acres.

Mr. Irwin: May the record show the witness has identified a spot on the uppermost part of Defendants' Exhibit A, westerly part, and the northerly spot. Is that a fair statement, [475] Mr. Johnson?

Q. In connection with your duties, Mr. Nunes, there is a hunting club, also, on part of that Gentry land, is there not?

A. Yes, sir. I built a small one there myself.

(Testimony of Lawrence Nunes.)

Q. Referring to the fall of 1949, did you have occasion to put out any lima beans?

A. We did. We put out about 17 bags.

Q. Did you observe whether or not the ducks ate those beans?      A. No, they did not.

Q. When did you put the beans out?

A. Well, I should say somewhere around the 10th, between the 10th and the 15th of September.

Q. How long did those lima beans remain without the ducks touching them?

A. Well, they laid there on the ground until after the season opened on October 21. We have got a small group, which includes about 10, that shoot at the club and all I had to do with it, I built it and filled the pond with water, and I left it up to Mr. Joe Farrar to handle the rest, and he checked with some warden, I don't know which one it was, and he said we could feed up to 72 hours before the season opened.

Q. What I meant was the lima beans. You put them out between the 10th and 15th of September and they remained there, [476] you know that, and you saw them still on the ground?

A. Yes, sir.

### Cross-Examination

By Mr. Johnson:

Q. I am not sure, Mr. Nunes, where these lima beans were put out. I am sorry, but I didn't get that.

(Testimony of Lawrence Nunes.)

A. Right around our pond. It was around this small club. You can't see that, hardly, on this map, but it is right around these dikes where we put out our beans, and right in here is another pond where we also have got a small levee, and we scattered them. I did not myself, but somebody did.

Q. What was your purpose in putting the lima beans out?      A. For duck feed, I guess.

Q. You were trying to attract ducks with them?

A. Trying to, but it didn't work.

Q. How many other seasons had you done that?

A. We had never done that before.

Q. Are you a hunter yourself?

A. When I get a chance.

Q. How long have you been hunting?

A. Since I have been about nine years old, big enough to carry a .22 rifle. [477]

\* \* \*

### LEO MULDOON

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

\* \* \*

### Direct Examination

By Mr. Irwin:

Q. Mr. Muldoon, where do you reside, sir?

A. I am the keeper of the Point Magu Game Preserve, Inc.

Q. You live in Ventura County?

A. Yes, sir.



(Testimony of Leo Muldoon.)

Q. How long have you been the keeper of Point Magu?      A. Oh, about five years.

Q. Have you had experience in observing the eating habits of ducks?      A. I have.

Q. Have you had occasion to observe whether or not [478] ducks will eat lima beans?

A. No, they won't.

Q. You have observed that of your own knowledge?      A. Yes, sir.

Q. In what way have you observed that, Mr. Muldoon?

A. Well, every year some of the boys that belong to the club will bring down a few beans, hoping they will eat them, and they just won't eat them.

Q. Have you, in connection with your duties as the manager of Point Magu Game Preserve, had occasion to observe flights of ducks and to observe how much grain they would consume over a period of a couple of hours?      A. Yes, sir.

Q. Have you ever made an experiment and actually calculated the number of ducks present?

A. Yes, sir, I have.

Q. What experiment did you conduct, Mr. Muldoon?

A. Well, we took nine sacks of grain, I imagine it was. I imagine there was, oh, 10 or 12 thousand ducks, I would say, and I took the nine sacks of grain out there and in 22 minutes it was gone. They ate it.

Q. How long?

A. Between 20 and 25 minutes.

(Testimony of Leo Muldoon.)

Q. When did you make that experiment, Mr. Muldoon?      A. This last year. [479]

Q. This last——

A. In the season, the first part of the season.

Q. Mr. Muldoon, just so we won't mislead anyone, you are related by marriage to Mr. Maxwell, one of the defendant in this case?      A. Yes.

Q. That, of course, in no way affects your testimony and you are telling the truth on the stand?

A. Yes, sir.

\* \* \*

### Cross-Examination

By Mr. Johnson:

Q. Have you got the figures on this experiment you conducted?      A. No, but I got a witness.

Q. Did you keep figures?

A. No, I don't keep figures.

Q. How many birds were there?

A. I would say between 10 and 12, 13 thousand.

Q. You haven't got the figures on the thing?

A. No, sir.

### Redirect Examination

By Mr. Irwin:

Q. You say you had a witness. Who was that?

A. My wife. She held the watch.

Q. What is that?

A. My wife held the watch.

\* \* \*

## JAMES McCORMICK

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

\* \* \*

## Direct Examination

By Mr. Irwin:

Q. Mr. McCormick, where do you reside, please, sir?      A. At Oxnard, California.

Q. How long have you lived there?

A. On this one ranch about 22 years. I was born near there.

Q. You are a member of the Santa Clara River Game Preserve, this family club that has been testified to here, are you not?      A. Yes. [481]

Q. You were in charge of the grain that was distributed on the club in 1949?      A. Yes.

Q. First of all, how much grain was purchased, Mr. McCormick?

A. I had three sacks in the barn from last year, and I purchased from Mr. Papek 80 sacks more of barley.

Q. How many pounds were there to the sack?

A. They averaged about 90 pounds to the sack.

Q. I show you defendants' Exhibit I in evidence and ask you to examine it and tell us, if you can, what that fairly represents.

A. That is a good sample of the 80 sacks that I bought from Mr. Papek.

Q. Where was that sample obtained?

A. It was obtained from one of the sacks. I



(Testimony of James McCormick.)

just dipped my hand in and filled up that box to that height.

Q. In other words, this sample, Defendants' Exhibit I, was prepared by you and taken from one of the remaining sacks of grain that you purchased prior to the opening of the season in 1949, is that true?      A. Yes.

Q. Having purchased that 80 sacks on behalf of the club and having three left over, will you state how much grain you caused to be distributed on the grounds of the Santa Clara [482] Game Preserve prior to the opening of the 1949 season.

A. The three sacks I had in the barn and 38 that were from the new purchase.

Q. In other words, a total of 41 sacks?

A. 41 sacks altogether.

Q. Who distributed this grain, please, Mr. McCormick? Did you have an assistant, in other words?

A. I had a man bring it down from the warehouse, and he helped me load the broadcaster and he helped me with it.

Q. Where did you load it, looking at Defendants' Exhibit A?

A. We came down in through here.

Q. What is the dike?

A. That is the south road, and I had this little broadcaster that I had hooked on a Ford Tractor. It hooked right behind and held about five or six sacks. We would take about five or six sacks and put that in from the truck.

(Testimony of James McCormick.)

Q. Then how did you go about distributing it?

A. Oh, I would go around the south road. This broadcaster had two circular spinners underneath the container that held the grain, and they would throw the grain out, oh, six to eight—it is according to the speed you go. At the slow speed I went, it threw it out five to six feet, probably, five to seven, on each side. [483]

But when I would go along the south road, I would shut off the side that was away from the water and drive slowly along, and it would cover the road and throw it out into the water maybe a foot or two, and then when I would get down to this No. 1 dike from the east road, this is the one I took, I would go down here and turn up there and go around here, and I would continue that operation until we had used the grain up.

Mr. Irwin: May the record show that his finger traveled down south road to dike 5, and across the center dike, and then up, your Honor.

The Court: Yes.

The Witness: I usually go this direction, but once or twice I reversed it and went the other way, which is the same.

Q. (By Mr. Irwin): I understand that.

A. One time I went by the road, I was watching the broadcaster, so instead of turning around, I continued over to this side and turned around on this one here, the north one, but just a small amount. I went down and back.

(Testimony of James McCormick.)

Q. Do you know whether or not those lima beans that have been testified about here were already out on the property at the time you distributed the grain? A. Yes, they were.

Q. By the way, do you and your brother also farm this land in the off season, which is part of the Santa Clara Game [484] Preserve?

A. Yes, we run cattle on that.

Q. Were you running cattle in there prior to the season?

A. Yes, we put 125 or better cattle in there, I think, late in June, and they were there until just a few days before the season opened.

Q. Did you, from your own observation, observe whether or not the cattle were consuming any of these lima beans that were there on the premises?

A. Yes. Several times I noticed the cattle feeding—well, you couldn't call it exactly feeding. Those beans were spread real thin out of the tailgate of a truck, just real thin, about five feet wide, and these cattle would, oh, more or less, you couldn't call it—they would kind of lip them up. They would spread their mouths and draw them together and pick up a few beans that way. There was so much dirt in them that I guess they didn't enjoy the dirt.

On one occasion that really sticks in my mind, I came out and there were 10 or 12, probably more, cattle, some eating them, others lying down, and others standing, and we had a bull there, and I noticed that his lips would really open up and pull



(Testimony of James McCormick.)

across, and I got a little closer, and he threatened to chase me, so I didn't bother any more.

Q. That is what sticks out in your memory?

A. Yes, that sticks out in my memory.

Q. And you left? A. And I left.

Q. This was, of course, prior to the opening of the season? A. Yes.

Q. And the cattle were removed before the season opened? A. Yes.

Q. You said those beans were there prior to your having distributed the grain. When was the grain distributed?

A. Well, Mr. Maxwell called me and told me about the time to get the grain out. He had talked to the warden and the warden was of the opinion we should get it out about 10 days before. So I had talked to Mr. Papek about buying this barley, and he told me it had weevil in it—

\* \* \*

Q. (By Mr. Irwin): All right. What was the condition of this grain that you purchased?

A. This grain, well, at the time I thought it would be a good buy but, as it turned out, it was, oh, I would say 20 to 25 per cent radish seed and chaff and other foreign matter, and some of the grain was light where undoubtedly the [486] weevil had drilled in and taken the flour out of the grain.

Q. You observed all this at the time you were opening up the bags and distributing the grain?

A. Yes. We put the grain out as soon as we

(Testimony of James McCormick.)

could. It was harvest time and I was busy, but I got the little tractor and broadcaster out there, and I had trouble, so I did not have the rest of the grain brought down until the next day. I put out those three sacks, and I was going to put it all out nine days before, but we were pressed for time and I couldn't get to it in time.

Q. So the last grain of this 41 sacks was put out about eight days before the season opened?

A. Yes, the 12th, in the afternoon, and the 13th, the morning of the 13th.

Q. It was the afternoon of the 12th and the morning of the 13th?      A. Yes.

Q. Now, after this grain was put out, a few days thereafter, did you have occasion to have a conversation with State Game Warden Getman?

A. Yes.

Q. Where was that conversation had?

A. I had come to the club to see if any more ducks had come in that Friday morning, and we had just a few hundred. I spread this grain with the broadcaster. Always before, we [487] would spread it out from sacks, but we put out such a small amount, that I had an idea the broadcaster would kind of hold up the clean-up. If we would put it out ordinarily, two or three thousand ducks would have cleaned it up in a short time. So when I noticed the ducks hadn't increased any by Friday morning, I went to Ojai and I talked to Mr. Carlos Getman, and I told Carlos that we had put this feed out and I had broadcast, and I was a little

(Testimony of James McCormick.)

concerned that the ducks weren't coming in, if we didn't get more pretty soon, they wouldn't be able to clean it up.

He said that he would check it and let me know.

Q. This was, you say, on the 14th?

A. Yes, Friday.

Q. In other words, a week before the season opened?

A. A week before the season started.

Q. You know County Game Warden Jack White, do you not?      A. Yes.

Q. Thereafter, did you have occasion to go over the Santa Clara Game Preserve prior to the opening of the season with Mr. White?

A. Yes. I met Mr. White at Oxnard and we went out and checked the club on Tuesday, I think that was the 18th of October, and we went over the club pretty thoroughly, and after the inspection, Mr. White told me that—he said, “Jim, [488] you needn't worry,” he says, “the ducks will have it cleaned up. You now have two or three thousand ducks here and I am sure it will be all right.”

Q. By the way, coming down now to October 21st, which was the day the season opened, directing your attention again to Defendant's Exhibit A, which is there before you, did you observe on what part of the preserve the ducks were concentrated on the morning of October 21?

A. The ducks—the water we pumped in would come in right about here, and we had a valve in each side of the middle road dike, and it would go out



(Testimony of James McCormick.)

there, and most of the ducks would congregate on these two middle dikes here where the water was fairly fresh.

Mr. Irwin: May the record show that the witness pointed to the eastern edge of Defendants' Exhibit A, the eastern line of the property?

Q. Now, then, first of all, you did shoot on the 21st of October, that is, the day before?

A. Yes.

Q. Will you just tell us what you did, where you went on the 21st of October on the game preserve there?

A. I went out and shot in blinds 11 and 12. That would be at dike 4. That was the first day.

Q. By the way, the shooting season opened at noon on October 21st? [489]

A. At noon on October 21st the season opened.

Q. After you came in, did you have occasion to see Warden Jack Bedwell that day? A. Yes.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Was there anyone else present?

A. Well, when I went in there were two other people present, a guest and Mr. Vincent Doud.

Q. And what conversation did you have with Mr. Jack Bedwell at that time?

A. Mr. Bedwell and I went out to the wagons, and I brought up the bean question. I told him that we had put the lima beans out here and that they looked bad, probably, and that we could cover

(Testimony of James McCormick.)

them up, we had a big carry-all and tractor out in the field. I said, "What do you thing about it?"

He said, "I think that would be a good idea."

Q. Did he make any other comment to you?

A. No, he didn't offer to go out to look at the beans, so we went back.

Q. Could you both see the beans from where you were standing at the time you had the conversation with him?

A. We were within, I would say, 60 to 70 yards from the beans, and they could be easily seen. [490]

Q. You did see them while you were talking to him?

A. Yes.

Q. Did you point to them?

A. I motioned towards them.

Q. By the way, going back a little bit to the time that you told us of the conversation with Mr. Getman, you didn't hear from Mr. Getman again, did you?

A. No, I didn't.

Q. Having in mind later on the 18th, you stated Mr. White went out with you and went over it, were you later on the grounds of the game preserve and before the season opened, and did you observe any State Game Wardens about these premises? This is before the season opened.

A. When I was out with Mr. White, I noticed two of the dikes needed a little dirt shoveled to hold them better, and I saw Mr. Vincent Doud and we went out either that afternoon or the next day, I can't be positive, it was either that afternoon or the next day, and that would be Tuesday afternoon

(Testimony of James McCormick.)

or Wednesday, and we drove up on the east road and came to a stop at the middle dike, and we started to get out of our car, when we noticed a Fish and Game car driving slowly along the north road just above the club.

When we got out and opened up the back of the car, he stopped just about here and observed us, I guess. I couldn't say, you know. [491]

We took the shovels out and went through the fence and started down the middle road dike and, as we did that, he started up and came towards us in his car slowly, and I turned around and tried to wave him down with a halting gesture, I guess you would call it, and he waved and speeded up his car and kept going.

So I thought that he was probably the game warden that came out to check the club and he didn't stop and everything was all right.

Q. On this afternoon of the 21st, when you talked to Mr. Bedwell, he said nothing further than that he thought it would be a good idea, when you volunteered that perhaps the lima beans should be covered over, because they looked bad?

A. Yes. Those were his words.

Q. Did you observe whether or not the ducks were eating any of those lima beans that were out there? A. No, they were not.

Q. Now, did you have a conversation with Mr. Maxwell after he returned from Los Angeles on the 19th or 20th of October regarding his talk with Mr. Macklin?



(Testimony of James McCormick.)

A. Yes. He told me before he was going to see Mr. Macklin, and I called to see what he had found out, called him on the telephone.

Q. In the interest of time, you heard Mr. Maxwell's testimony as to the conversation he said he had with Mr. [492] Macklin? A. Yes.

Q. Did he tell you substantially what he stated here on the stand?

A. He said if the barley was substantially cleaned up, it was all right to go ahead and shoot, so I notified Mr. Jim Doud, our president, and we just told the members to go ahead and shoot, everything was all right.

Q. For the opening of the season? A. Yes.

Q. I don't think I covered this. There was no question but what you shot your birds there on the 21st and likewise on the 22nd? A. Yes.

Q. I wish to show you Government's Exhibit No. 2 in evidence, and I understand that the gentleman who took the pictures stated this was taken on the 22nd of October, 1949. Looking at that picture, can you tell us where on the Santa Clara Game Preserve that picture was taken with reference to the dikes, if you can or, if you can't, say so.

A. Well, those corners all look more or less alike, although the upper two have—I would say that was on the—that would be on the south road, probably, and up near the southwest end.

Q. Specifically, do you recall whether or not between [493] dikes 4 and 5 there was a good deal of water in there?

(Testimony of James McCormick.)

A. Yes. At the opening of the season, the first two or three days, those ponds were all full.

Q. I call your attention to the fact that in this picture here the pond appears to be nearly dry.

A. Yes. I can see just a small amount of water.

Q. So that the physical characteristics of Exhibit 2, as far as water is concerned, do not correspond with conditions as they existed at dikes 4 and 5, as they existed on the 22nd day of October, 1949?

A. No, they do not.

\* \* \*

### Cross-Examination

By Mr. Johnson:

Q. When, again, were the lima beans put out?

A. I didn't actually put out the lima beans, but they were put out on October 8th.

Q. Who put them out?

A. Mr. Eugene Doud had them put out.

Q. What was his reason for putting them out?

A. Well, we had talked about them, and we thought maybe that if we put the beans in that southwest corner, a small amount, it might keep the mudhens over there. We get them for nothing, and we just hoped they would keep the mudhens out from the peppers. [494]

Q. They weren't put out for cattle, then?

A. No, they were not.

Q. Had you ever previously put lima beans out?

A. We had put them out at another time and the ducks would not eat them?

(Testimony of James McCormick.)

Q. Why did you want to put them out this time then?

A. Well, Mr. Doud had them and he brought them down and we had several—20 other sacks, at least, I guess, in the barn, and I did not bother to have them put out because I did not think it was worth while. The ducks wouldn't eat them.

Q. In other words, those that were put out were put out on the chance that they might eat them?

A. And also to keep the mudhens away. My brother and I farm all that land and on the other side there, that was subleased to the Gentry Corporation with the understanding we would keep all mudhens out of the pimientos, because the mudhens drill a hole in them and eat the seed out, and they are very destructive.

So we told them if we had to, we would hire a rider and have him ride back and forth and keep them out, and that is why we put them, all the feed, on the south of the club. We didn't put any whatever on the north, because that would put them closer to the pimientos.

Q. How many sacks were put out of beans? [495]

A. 36, I believe.

Q. How much do those sacks weigh?

A. They were not fully filled. Sometimes they sew them and other times they will draw them up and tie a knot. I would say they averaged 100 pounds of dirt and beans.

Q. How many were put out there previous to the season?



(Testimony of James McCormick.)

A. I don't recall. I didn't put them out.

Q. But there were some put out?

A. The previous season, yes, we tried some.

Q. That would be the latter part of December, 1948?

A. No, it was before the opening of the season.

Q. But they were there during the latter part of December, 1948, were they not?

A. Yes, and the ducks would not eat them, and they smelled so bad, you could hardly get in your blind near them.

Q. But you did go ahead and try it again in October, 1949?

A. Just in that one corner away from where the ducks would eat them. If the ducks ate them, they would be at the center road.

Q. You put them on a corner, you say?

A. We put them on the southwest corner over here on the south road.

Q. You ran them along the south road, didn't you? [496]      A. Yes.

Q. Like it shows in the picture?

A. For about 75 or 80 yards.

Q. What kind of grain did you put out the season previous?      A. We put out barley.

Q. Was it the same type of barley you put out this last year?

A. A much better quality. My brother and I grew that barley.

Q. You stated when you talked to Jack Bedwell,

(Testimony of James McCormick.)

you remarked to him that the lima beans looked bad there. What did you mean by that?

A. Well, they were kind of futile, I guess. We put them out to attract the mudhens, and the only thing that ate them were the cattle.

Q. Why did it look bad to you? In your opinion, would it be bad to put out things for mudhens? Is that what you mean?

A. We didn't shoot the mudhens.

Q. Why would it look bad to you to put out lima beans?

A. Oh, to have any kind of food along the dike would look bad, I imagine, to the general public.

Q. In other words, lima beans might be duck food, [497] that is what you thought?

A. No. I had experience that they were not duck food.

Q. Then why did you feel it looked bad?

A. The mudhens wouldn't eat them, and I wanted to cooperate as best I could.

Q. What was there to cooperate with, if there was nothing wrong in putting them out?

A. I guess there was nothing wrong with them.

\* \* \*

Q. (By Mr. Johnson): Why did it look bad?

A. I really never thought why they looked bad, but if it would help any in the eyes of the Fish and Game, I told them—I didn't say this but I felt I could cover them up for him.

Q. Isn't it a fact you realized possibly they

(Testimony of James McCormick.)

were duck food and you were indulging in a possible violation by having them out there and that is the reason you said they looked bad?

A. No. [498]

\* \* \*

Q. (By Mr. Johnson): Why didn't you cover them up in [499] accordance with your suggestion, since you do say, of course, Mr. Bedwell agreed it was a good suggestion?

A. I motioned toward the tractor and carry-all, which was out in the field about a quarter of a mile, and it was standing still. Being harvest season, the man that handled that was working, and it was Tuesday morning before we had a chance to do it, and Tuesday morning they were covered up.

Q. But you did go out and hunt on the 22nd after suggesting they ought to be covered up, because they looked bad, presumably because the public might not think it was right?

A. Yes, but we never had time to cover them up, and he didn't offer to go out and look at them, so I thought he considered they didn't mean anything.

Q. You do say that he agreed they looked bad, don't you, and agreed you ought to cover them up?

A. He didn't agree that they looked bad.

Q. You said that in your direct examination.

A. He said it would be a good idea.

Q. He said it would be a good idea, and therefore he agreed with you they looked bad. What time did you leave the premises on the 21st of



(Testimony of James McCormick.)

October after you had suggested they be covered up?

A. Oh, I imagine shortly after 2:00 o'clock.

Q. What did you do the rest of the day? Couldn't you have covered them up at that time?

A. I have a walnut orchard and we were in the middle of harvest season, and I hurried up there. I really shouldn't have been hunting.

Q. If you felt they looked bad and they should be covered up, why did you go ahead and hunt the next day?

A. Because he did not tell me to cover them up.

Q. He said it was a good idea.

A. Yes, but just as a suggestion, I guess.

Q. But you didn't follow the suggestion. It was your suggestion, however, wasn't it?

A. Yes.

Q. And you didn't follow your own suggestion?

A. I told him we would cover them up as soon as we could get to them.

Q. And you couldn't get to them before you went hunting next?      A. The next morning?

Q. Yes.

A. No, I could not. That man was busy on the threshing machine. [501]

\* \* \*

J. L. STEVENSON

called as a witness by and on behalf of the defendants, having first been duly sworn, was examined and testified as follows:

\* \* \*

Direct Examination

By Mr. Irwin:

Q. Mr. Stevenson, you know Mr. Carty who testified here in this case? A. Yes, I do.

Q. As a matter of fact, were you a guest on the 22nd day of October, 1949, at the Santa Clara Gun Club? A. Yes. [502]

\* \* \*

Q. So, of course, you couldn't observe the conditions on the ground before daylight, since it was dark? A. That is right.

Q. But after you had finished shooting, which way did you come off the pond?

A. Let's see. I am a little confused here. But I came—we were over here. We came around over to here.

Mr. Irwin: The witness has, with his finger, shown he was in a position approximately in the center, between the center dike and the south river road on dike 4. He has traced a line showing he walked north to the center dike and then easterly to the east river road.

Mr. Johnson: East river road?

Mr. Irwin: Down here.

Q. Of course, it was daylight when you came away from the blinds? A. That's right.

(Testimony of J. L. Stevenson.)

Q. Did you have occasion to or did you see any grain as you were walking across there and down the center dike?

A. There was no grain here. We were hunting here. There was some little—I don't know if it was beans, straw, or mustard, or something like that around, but I seen no barley whatever. [503]

Mr. Irwin: May the record again show the witness pointed with his finger to an approximate point mid-distant between the south river road and center dike on dike 4, and his finger traveled north on the center dike and then easterly on the center dike to the easterly extremity of the premises? [504]

\* \* \*

### JOE PAUL, JR.

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

\* \* \*

#### Direct Examination

By Mr. Irwin:

Q. Will you please state your full name?

A. Joe Paul, Jr.

Q. What is your business or occupation, Mr. Paul?

A. I am county editor of the Star Free Press in Ventura.

Q. Were you so engaged in October, 1949.

A. Yes.

Q. Did you have a telephone conversation with



(Testimony of Joe Paul, Jr.)

Agent Elder of the Federal Fish and Game Service on or about the 24th day of October, 1949?

A. I did. [507]

Mr. Irwin: May I have this marked for identification?

The Clerk: What purports to be a newspaper article will be marked Defendants' Exhibit N for identification.

(The article referred to was marked Defendants' Exhibit N for identification.)

Mr. Irwin. Did you make certain notations at the time you were talking to him, which you later caused to be printed in your newspaper?

A. Yes, I took notes.

Q. And just before taking the stand, you refreshed your recollection on that phone conversation by referring to Defendants' Exhibit N for identification?

A. I did.

Q. As a result of that, can you tell us, if you will, what the conversation was between Mr. Elder and yourself on the 24th day of October, 1949?

A. Well, I had called him previously when I had first heard of this duck hunting case. On this particular date, I had called him to ascertain what they planned to do as a result of various information that he had gathered that day. I discussed with him the laws and the violations, and also the setup that had led to his gathering information there in Oxnard.

Q. What did he say about the information that had led to their going to Oxnard. [508]

(Testimony of Joe Paul, Jr.)

A. Well, he said that this particular duck club, the Santa Clara Game Preserve, had been more or less under observation for some time. He didn't indicate to me under whose observation it had been, but they had been watching the club.

Q. Was there any reference to the opening date of the season, as to whether they had been watching it?

A. Well, he said he had been there the day after the opening of the season, but that he had received information that there was grain on the ponds several days before the season had opened.

\* \* \*

### JACK WHITE

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

\* \* \*

### Direct Examination

By Mr. Irwin:

Q. Where do you reside, Mr. White.

A. At Ventura.

Q. How long have you resided there? [509]

A. Since 1928.

Q. What is your business or occupation?

A. I am Ventura County game warden.

Q. How long have you been so engaged, Mr. White?      A. This is my 20th year.

Q. Directing your attention to the month of October, 1949, in addition to holding the position

(Testimony of Jack White.)

of county game warden, did you have any other title with reference to a state enforcement officer or federal enforcement officer?

A. I have a deputy appointment under each, state and federal.

Q. In other words, during the month of October, 1949, you were also a deputy federal game warden and a deputy state warden? A. I was.

Q. Do you know Mr. Carty, Mr. Maxwell, Mr. McCormick, and the other gentlemen who are involved here in this case, sir? A. Yes, sir.

Q. The Douds? A. Yes, sir.

Q. You are familiar, are you not, with the premises of the Santa Clara Game Preserve?

A. Yes, sir.

Q. There has been some testimony that in times past you have been a guest of that club. Is that true? A. Yes, sir.

Q. And you have shot on it during the season?

A. Yes, sir.

Q. I have here before you what has been identified as Defendants' Exhibit A, as being an airplane view of that Santa Clara Game Preserve. Does that appear to you to fairly reflect from the air an aerial view of the Santa Clara Game Preserve as it appeared about in October, 1949?

A. Yes, sir, it does.

Q. With the opening of the season commencing on October 21, 1949, in connection with your official duties, did you make any check of the various gun clubs in the area? A. Yes, sir, all of them.



(Testimony of Jack White.)

Q. I am going to ask you if you made an inspection, one or more inspections of the Santa Clara Game Preserve. A. I made two.

Q. With reference to the first one, did anybody accompany you—withdraw that.

Do you keep a diary, which is part of the official record of your activities? A. Yes, sir, I do.

Q. Do you have your diary with you for the month of October, 1949? A. Yes, sir. [511]

Q. Can you refer to that diary and tell us on what date and with whom you first went to the Santa Clara Game Preserve?

A. It was on October 18th.

Q. With whom did you go?

A. Mr. Jim McCormick.

Q. And you went over the premises there?

A. Yes, sir.

Q. At whose request did you go out on that particular day, if anyone's?

A. Mr. Maxwell's.

Q. After you made this inspection with Mr. McCormick, what, if anything, did you say to either him or Mr. Maxwell as to what you found with reference to the grounds being available for hunting at the opening of the season on the 21st?

A. Could I refer to this?

Q. Please do.

A. Was in the office until 10:00 a.m., Oxnard, met McCormick and Maxwell regarding feeding. Said they had been told to quit feeding 10 days before season opens. Went to Santa Clara Club with

(Testimony of Jack White.)

Jim McCormick. No feeding since October 12th. Looked okay. Some beans and a little barley still out.

That was all that I have on that day pertaining to the [512] club.

Q. Do you recall as to whether or not you gave any opinion to Mr. McCormick or made any expression to Mr. Maxwell or Mr. McCormick on the basis of what you saw on the 18th as to whether or not they could hunt on the 21st?

A. Well, I went with Mr. McCormick, at the request of Mr. Maxwell, and with reference to this picture, we parked down by these bean wagons. We walked up this levee and inspected the levees over to the center road and back down the center road and back to the point of beginning. There were some beans along the road and a little scattered barley.

I told Mr. McCormick that in my opinion, the number of birds that were in there, that it appeared to me they would probably clean it up, and that I didn't think there was anything to worry about and saw no reason why they shouldn't go ahead and shoot.

Q. Did you likewise make another check of the club between that date—I think you said October 18th?

A. That is correct.

Q. Did you go by there again in the course of your official duties between the 18th and the morning of October 21st?

A. On October 20th.

Q. Does your diary likewise refer to your having been there then? [513]

A. Yes, sir.

(Testimony of Jack White.)

Q. What did you find on that day?

A. 3:30 p.m., McGrath club, which is referred to sometimes as this same club—had a little feed still out and some beans the ducks won't eat. Feed had been out for some time. Not many ducks on club. 4:30 p.m., Point Magu Club, no feed. 5:20 p.m., Ventura Club.

Q. By the way, with reference to your entry there about "ducks won't eat beans," have you had any experience, Mr. White, in your 20-odd years as a game warden in determining whether or not lima beans are duck feed for ducks in that area.

A. I don't think they are duck feed.

Q. Going back again a moment, if I may, Mr. White, you said, I believe, that Mr. Maxwell called you on the 18th?

A. Yes, sir.

Q. Did you have any conversation with him with reference to regulations?

A. Yes, sir, I did. He called me in the morning of the 18th at my office and asked me if there had been any change in the feeding regulations, and I told him not to my knowledge.

He said that he had been informed by Warden Edgerton that they were to stop feeding 10 days before the season opened. I told him that I knew nothing about it. [514]

I called Mr. Macklin, and he was out, and I called Mr. Spicer in Ojai and asked him if there had been any change in the regulations, and he said no.

I asked him, I told him I was concerned regard-



(Testimony of Jack White.)

ing the 10-day feeding period, and I asked him where he got it.

He said, well, they had all more or less determined that was the proper time to stop feeding, and he asked me where I had got by two or three day period.

I told him that I had gotten my information from Mr. Macklin, and he said, well, that they had decided 10 days was the proper time to stop feeding.

So, due to the controversial issue, I went to Oxnard and saw Mr. Maxwell and gave him the information he asked for. I told him that I thought probably the best procedure would be to call Mr. Macklin.

He said that he was going to the city and instead of calling Mr. Macklin, he would go in and see him.

Q. When you talked to Mr. Spicer and asked him about the regulations, did you tell him you were calling in connection with a request you had had from the members of the Santa Clara Game Preserve?

A. That's right. It was a point of information.

Q. This was all prior to the opening of the season?

A. That was on the morning of the 18th in the office.

Q. And thereafter, as you testified—[515]

A. I went to Mr. Maxwell's office and delivered the information I had obtained, and he asked me if I would mind going out and checking the club, and I told him I would be glad to.

(Testimony of Jack White.)

He called Mr. McCormick, and Mr. McCormick met me at Mr. Maxwell's office and we then proceeded to the Santa Clara Game Preserve, where we checked the club.

Mr. Irwin: You may cross-examine, Mr. Johnson.

### Cross-Examination

By Mr. Johnson:

Q. You are a deputy federal game warden?

A. Yes, sir.

Q. When inquiring about what the regulations were, did you phone Mr. Elder, your superior, as a deputy federal game warden?

A. No. I believe Mr. Spicer told me he had talked to Mr. Elder and that was his interpretation, if I remember correctly.

Q. But you didn't call him?

A. No, sir. I tried to call Mr. Elder several times. It is very difficult to reach him. I have talked to him on occasions, though.

Q. As a matter of fact, you haven't been a county game warden for 20 years, have you?

A. Yes, sir, deputy and county game warden.

Q. Weren't you a fire warden up until 1943?

A. In 1931, I was employed by the Ventura County as a fire warden and deputy game warden February, 1931. In 1934, I was transferred to the Simi Valley as a deputy fire warden and game warden in charge of that area. In 1944, I was appointed as county game warden of Ventura County.

(Testimony of Jack White.)

Q. You shoot on the Santa Clara Club quite a bit, don't you?

A. I have shot there several times. I shoot at all the clubs.

Q. How long have you known Mr. Carty?

A. Oh, probably 18 years or so.

Q. How long have you known Mr. Maxwell?

A. Practically the same length of time.

Q. Are they good friends of yours?

A. I hope so.

Q. You say that on the 18th of October, you checked the Santa Clara Club with Mr. James McCormick?

A. Yes, sir.

Q. That is James McCormick, who is a defendant here?

A. Yes, sir.

Q. A member of the club?

A. Yes, sir.

Q. This was at Mr. Maxwell's request?

A. Yes, sir. [517]

Q. You say there were some beans and a little barley there and they looked okay?

A. Well, with the number of ducks they had there, I told Mr. McCormick I believed it would be cleaned up sufficiently to allow shooting.

Q. May I see your diary?

A. Yes, sir. I doubt if you can read it.

Q. This is "office 10:00 a.m." That means you were at your office at 10:00 a.m.?

A. Until 10:00 a.m.

Q. "At Oxnard."

A. Went to Oxnard.

Q. "Met McCormick and Maxwell."

A. That's right.



(Testimony of Jack White.)

Q. "Regarding feeding. They said they had beans."

A. No. They said they had been told.

Q. I am sorry.

A. They were told to quit feeding 10 days before season opened.

Q. I guess I can't read your writing.

A. That is my shorthand. [518]

\* \* \*

Q. (By Mr. Johnson): Referred to October 21, what does this say here, starting with 9:30 p.m.?

A. "On October 21 at 9:30 p.m." that is the time I returned home. However, I made a notation here.

Q. What does it say?

A. I attended barbecue as a guest of the club. That is the Ventura Club.

Q. At 7:00 p.m.?

A. And was home at 9:30 p.m.

Q. I notice you say on October 20, 1949—correct me if I am wrong on this—3:30 p.m., McGrath Club. That is the Santa Clara Club? A. Yes, sir.

Q. "Had a little feed still out and some beans the ducks won't eat." Do you usually put in a remark that the ducks won't eat a particular thing when you report what is on the premises? In other words, you usually say they had beans which the ducks won't eat? A. That is correct.

Q. Referring to October 19 again, you say there were some barley, beans and some barley.

Mr. Irwin: The 18th. [519]

(Testimony of Jack White.)

The Witness: No, this is the 19th. This is a different club. It is the Gentry Club.

Q. (By Mr. Johnson): There were beans there?

A. That's right, and some barley.

Q. Was it the 18th you had your first inspection?

A. At the McGrath Club, yes, sir.

Q. That is what I mean. "Had beans." Where is it you say they had some beans and a little barley? Was that on the 21st or the——

A. It was on the 18th.

Q. Showing you Government's Exhibit 2 through 9, is that substantially the amount of beans and barley that you saw there at that time?

A. I don't know. Where is that in relation to this map?

Q. It is on the premises of the club as marked in these areas here. Each exhibit is referred to on Government's Exhibit No. 1, each area depicted in the photograph is referred to by a red square with a number under it, the number referring to the number of the exhibit which the photograph is.

A. I have never seen these. I wouldn't recognize them as being such, but the beans were along this area.

Q. Would you say that is a pretty accurate picture, for example, Government's Exhibit 7, of the amount of beans you saw on that road? [520]

A. It is hard to determine from a picture, but there were quite a few beans along the road.

Q. Showing you Government's Exhibit No. 8,

(Testimony of Jack White.)

that is the road you refer to, the one pictured there?      A. That is correct.

Q. Would you say that pretty well portrays what you recall having seen on the 18th and the 20th?      A. Approximately.

Q. Referring to Government's Exhibit No. 2, would you say that depicts the approximate amount of barley you saw on some of the areas?

A. Well, I don't recognize this area on this club.

Q. Testimony has been adduced to the effect that this particular area is right here——

Mr. Irwin: Pardon me, counsel. Be sure and say there are some controversies about that.

Q. (By Mr. Johnson): Assuming that it is right here.

A. No, sir. I never was up this far on this club.

Q. How far did you go on the club when you inspected it?

A. We came up to this levee—this levee here.

Q. That is No. 2, counting this as 1?

A. That's right.

Q. In other words, you came up to No. 2. Where else did you go? [521]

A. Walked across the levee, back down this middle road, and out here, down here.

Q. Excuse me. You walked up No. 2, west on the middle dike to cross dike No. 1, south to the south road, and then west to the west side?

A. Correct. There were—if I might add this, a great concentration of ducks were on this par-



(Testimony of Jack White.)

ticular levee, and I did not wish to disturb them.

\* \* \*

Q. Why don't you describe the area for the record.      A. This is levee——

Q. Look at the diagram. I think that might help.

A. I think that would be levee 3. Is that what this dike is here, levee 3?

Q. No, no. Here is 3.

A. Then it would be levee 2.

Q. Do mudhens eat lima beans?

A. Not to my knowledge.

Q. Why did all the other clubs and you put out lima beans, or why do duck clubs put them out, put them out in the Ventura area?

A. I don't know.

Q. But they do put them out? [522]

A. Yes, sir.

Q. This club has put them out before, too, hasn't it, Santa Clara?      A. Yes, sir.

Q. As a matter of fact, you were shooting there on December 30, 1948, were you not, while there were beans on the premises?

A. I don't know whether I shot there on December 31st or 30th or not.

Q. But you shot that season?      A. Yes, sir.

Q. And you signed the register book that they maintained every time you shot?

A. No, I don't believe I did.

Q. Well, somebody else signed it for you?

A. I don't know.

(Testimony of Jack White.)

Q. On the 20th of October, you indicted, according to your diary, this club, the Santa Clara Club, at 3:30 p.m., and marked "Little feed, some beans and barley. Out some time"? A. Yes, sir.

Q. How did you determine they had been out some time?

A. Mr. McCormick told me when he put them out.

Q. Did you examine them to see whether you could tell personally that it had been out some time?

A. No, sir.

Q. What kind of reports do you make as county game warden?

A. Quarterly reports to the board of supervisors of Ventura County, one copy going to Mr. Earl Macklin, the assistant chief of patrol in charge of the Los Angeles office, one to the San Francisco office, the Division of Fish and Game, and one in my file. [524]

\* \* \*

Q. (By Mr. Johnson): You don't make any weekly reports, do you?

A. No, sir, only in my diary.

Q. The only report you make is a quarterly report? A. Yes, sir. [525]

\* \* \*

Q. (By Mr. Johnson): Do you know Ed White, who is the caretaker of the Ventura County Game Club? A. Yes, sir.

Q. Do you remember phoning him on the night of October 20, 1949? A. No, sir.

(Testimony of Jack White.)

Q. Isn't it a fact that on or about that date, you [527] phoned him and told him that the Santa Clara Club had grain and beans on it?

A. No, sir. He has no telephone. I have never telephoned him.

Q. Did you have a conversation with him at all on those dates in that regard? A. The 19th?

Q. Well, the 19th, on or about the 19th or 20th?

A. I had a conversation with Mr. White at the club on the evening of the 20th about 5:30.

Q. I am sorry. It was not a phone call. That was purely an error on my part. Did you tell him at that time that the Santa Clara Club had barley and beans there?

A. No, sir. We did not discuss the condition of any club.

Q. You didn't discuss the Santa Clara Club at all? A. No, sir.

Q. On the next morning, the morning of the 21st, isn't it true you called Warden John Spicer and told him that you had inspected all clubs and that they were all clean?

A. No, sir. I had no telephone conversation with Mr. Spicer on the morning of the 21st of October.

Q. Did you have one on the morning of the 20th?

A. No, sir, on the 18th.

Q. Did you have a personal conversation with him? [528] A. No, sir.

Q. Where did you get this figure of 72 hours?

A. From Mr. Macklin, the assistant chief patrol



(Testimony of Jack White.)

at Los Angeles. If I might explain, your Honor?

The Court: Yes.

The Witness: Well, I don't work directly under Mr. Macklin. I have always regarded him very highly, and in his position I have always considered what he gave any of his men pertained to me, and whenever I am in doubt, I usually call him for any interpretation of the law or for anything that I am a little in doubt about.

I called Mr. Macklin regarding his opinion on the feeding situation, and he told me he thought they should quit feeding at least three or four days before the season opened. That was last year. I don't know, I guess I said, "Seventy-two hours?" And he said, "Yes." He said, "That's all right, three days." That is what I have gone by.

Q. (By Mr. Johnson): He also said, did he not, it had to be cleaned up as of the time they started to shoot?

A. I don't recall that he said that, but I am sure that was the interpretation.

Q. You knew that, didn't you?

A. Yes, sir.

Q. You understood then and do now that this is a federal regulation, isn't that correct? [529]

A. Yes, sir.

Q. Did you ever attempt to get an interpretation of this regulation from the federal people in line with your duty as a deputy federal game warden?

(Testimony of Jack White.)

A. No, sir. I have always taken my orders from Mr. Macklin.

\* \* \*

Mr. Irwin: May it please the court, ladies and gentlemen of the jury: Government counsel and myself have entered into a stipulation which, with the court's permission, I will now read at this time.

The defendants, E. C. Maxwell, Edwin Carty and James McCormick, have testified for the defense. The remaining defendants are and have been in court and are ready and willing to testify. I am going to pause at this moment and ask them to stand and be identified. Mr. H. W. McCormick, Mr. Eugene Doud, Mr. James R. Doud, Mr. Vincent Doud, Raymond E. Farrell, Robert Maulhardt.

All these gentlemen have been in court and are ready and willing to testify. However, it is stipulated between the prosecution and the defense that should these remaining defendants take the stand, their testimony would be cumulative [530] in that they would likewise testify as to their presence at the Santa Clara Game Preserve on October 22, 1949, and that they did also shoot and take ducks on said date.

This stipulation is made in the interest of saving time and should in nowise be regarded as prejudicial to either the government or the defense.

The Court: It may be so stipulated.

Mr. Irwin: So stipulated, Mr. Johnson?

Mr. Johnson: Yes, so stipulated.

Mr. Irwin: Thank you, sir. With the acceptance

(Testimony of Jack White.)

of that stipulation, your Honor, and it having been made a part of the record, the defense rests. [531]

\* \* \*

### CARLOS GETMAN

called as a witness on behalf of the government in rebuttal, having been previously duly sworn, testified as follows:

#### Direct-Examination

By Mr. Johnson:

Q. I believe you have already testified you are a state game warden? A. That is true.

Q. And you are familiar with the area in Ventura County, are you not? [532] A. I am.

Q. Directing your attention to the date of on or about December 28, 1948, did you have occasion to inspect the premises of the Santa Clara Game Preserve on that date, or did you not?

A. I did.

Q. Was that during the open season?

A. It was.

Q. What did you find the condition of the Santa Clara Game Preserve to be on that date?

A. On that particular day, I observed six geese out on the dike.

Q. What were they doing?

A. They apparently were feeding.

Q. What else did you observe, if anything?

A. I was quite interested in them, and that was the closest I ever got to geese, and I thought I



(Testimony of Carlos Getman.)

would see how close I could get to them, and so I hiked out on the dike, and I noticed they had been feeding out there at that time. As I approached them, they flew away.

Q. What did you observe as to the condition of the premises of this club?

A. They had lima beans on that dike.

Q. What dike was it, referring to this diagram, if you will? [533]

A. That was the middle dike.

Q. Where did you see the geese?

A. They were approximately at the first pond.

Q. Near the middle dike?

A. That is correct.

Q. Did you observe anything else?

A. I observed barley. There was barley on the dikes at that time.

Q. On the dikes of this club?

A. There was.

Q. Where was it, what dikes had barley, if you recall? A. It was the south road.

Q. What kind of barley was it?

A. It was just whole barley.

Q. Was there anything else mixed in with it?

A. I didn't notice it at the time, no.

Q. Did you look it over? A. I did.

Mr. Irwin: You are talking about 1948, aren't you, Mr. Johnson?

Mr. Johnson: Yes. [534]

(Testimony of Carlos Getman.)

Q. Let me hand you Government's Exhibit No. 10 and ask you if that is the general type of barley you saw on the premises at that time.

A. It was.

Q. The same type of barley? A. Yes.

Q. Did you, after you observed the premises in this condition, do anything?

A. I called my immediate supervisor, Captain Fred Hecker.

Q. Is he now dead? A. He is.

Q. What did you do then, or what did you say to him?

A. I told him the conditions, and I told him there was feed on the dikes, and he in turn told me he would contact Warden Spicer. [535]

Q. Did you do anything more in regard to this matter in the next day or two?

A. Well, it was the following two or three days, the following two days, I believe it was, that Warden Spicer and I made an investigation of the club.

Q. What date was that, approximately?

A. That was the 29th and 30th of December.

Q. You and Warden Spicer together inspected the club? A. We did.

Q. Did you observe the condition of the premises at that time? A. We did.

Q. What did you find it to be?

A. They had lima beans and barley on at that time.

(Testimony of Carlos Getman.)

Q. What did you do after that occasion, if anything?      A. Agent Elder was notified.

Q. Did you again call upon the premises of the club?      A. We did.

Q. On what date was that, if you know?

A. January 1.

Q. Who was with you on that occasion?

A. Agent Elder and Agent Spicer and myself.

Q. What did you find the condition of the premises to be on that occasion?

A. Beans and barley on them. [536]

Q. Were all of these dates, that is December 28th, December 29th, and January 2nd, during open season?      A. They were.

\* \* \*

### JOHN SPICER

called as a witness on behalf of the government in rebuttal, having been previously duly sworn, testified as follows:

#### Direct-Examination

By Mr. Johnson:

Q. You have already testified you are a state game warden?      A. Yes.

Q. Located in Ventura County?      A. Yes.

Q. Directing your attention to on or about December 28, 1948—I don't mean December 28th, I mean December 30th, 29th or 30th, 1948, did you have occasion to call upon the premises of the Santa Clara River Game Preserve?

A. Yes, I did. [537]



(Testimony of John Spicer.)

Q. How did you happen to call upon their premises?

A. Well, I was in San Luis Obispo on additional duty when Warden Getman called Captain Hecker, and Captain Hecker in turn told me of the situation, and I left San Luis Obispo and came back down to Ventura County, and I accompanied Warden Getman to the Santa Clara Game Preserve.

Q. Did you enter the premises then of the Santa Clara Game Preserve?      A. Yes, sir, I did.

Q. Did you observe the condition of the premises?      A. Yes, I did.

Q. What were the conditions of the premises on that date?

A. Well, as far as grain went, there was both barley and lima beans on the club.

Q. Barley and lima beans?      A. Yes.

Q. Can you tell in general the areas in which you found them, if you remember?

A. Well, I believe it was the middle dike. I say in the vicinity of cross dike 2, 1, 2 or 3.

Q. Did you take any action after observing the condition of the premises, or did you not?

A. I beg your pardon?

Q. Did you take any official action after making this [538] observation, or did you not?

A. I contacted Agent Elder.

Q. He is of the United States Wildlife Management?      A. Yes, he is.

Q. What then occurred, if anything?

A. On the first day of January, I accompanied

(Testimony of John Spicer.)

him again to the ponds of the Santa Clara Game Preserve.

Q. Was Mr. Getman present at that time?

A. Yes, he was.

Q. What did you observe?

A. Well, we observed the same condition there as we had seen the previous day.

Q. Did you have occasion on or about that time to have a conversation with Mr. Carty?

A. I believe that evening Mr. Carty called me and said something about he understood the club had been closed to shooting. I informed him it was a federal matter, that the best thing for him to do would be to contact Mr. Elder.

#### Cross-Examination

By Mr. Irwin:

Q. Are you sure, Mr. Spicer, you didn't tell a Mexican employee on the ranch this Thursday night they were not to shoot, and that it was the following morning you talked——

A. No. I talked to the Mexican keeper that evening [539] and asked him if he knew Mr. Carty, and he said he did. I think I asked him if he knew several of the members, and I believe he said he did, and then I told him that it would be necessary for him to contact them and tell them that we had been out.

Q. Wasn't it in fact the following morning you talked to Mr. Carty?

(Testimony of John Spicer.)

A. No. I believe he called me that evening.

Q. You wouldn't be sure?

A. Yes, I am quite sure.

\* \* \*

A. W. ELDER

called as a witness on behalf of the government in rebuttal, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

Q. You have already stated you are a federal wildlife management agent in this area?

A. That's right.

Q. Your area covers Oxnard and Ventura County?

A. That is correct.

Q. Did you have occasion on or about the 1st of January, 1949, [540] to call upon the premises of the Santa Clara Game Preserve?

A. I did.

Q. What were the circumstances which caused you to make that call?

A. I returned from a patrol trip, oh, around 7:00 o'clock in the evening on the 31st of December, and there was a note there at home to call the operator at Ojai for Warden Spicer. I did, and Warden Spicer asked me if I could come up right away, that the Santa Clara River Game Preserve was baited with barley and lima beans.



(Testimony of A. W. Elder.)

I arranged with Warden Spicer to meet him the next morning at the Ventura police station.

Q. Did you then meet him and proceed to the premises of the club?

A. I met Warden Spicer and Warden Getman.

Q. And did you enter the premises of the club?

A. We drove to the premises of the club and entered the club grounds.

Q. Did you observe the premises of the club?

A. I covered nearly every foot of it.

Q. What did you observe as to the condition of the premises, if anything?

A. The first thing that struck my attention was while walking west on that center road dike, there was an enormous [541] amount of lima beans that had been there. The beans had been soaked——

Q. What do you mean “had been there”?

A. Some were still there. I was going to say they had been out long enough so that the skins had been wet and slipped off, and in places there was quite a large quantity of just skins alone. The beans were gone. They were in the water, in the corners, where the prevailing wind had apparently moved all these skins up into one corner. There was several inches thick of just skins, no beans. At a few points, there was still a few grains of barley. I would say at the time I visited the club that the barley was fairly well cleaned up.

Q. But you did see some evidence of barley?

A. I saw enough barley to make an arrest if there had been any shooting.

(Testimony of A. W. Elder.)

Q. What official action, if any, did you take after this?

A. Well, the next thing I did was inspect, or talk to the Mexican keeper and look at the one sack of barley that he had not put out. There was still one sack of barley in the cook shack. I got his story as to how it happened barley was put out two or three days before.

Q. And subsequent to that occasion and in regard to that occasion, did you have a telephone conversation with Mr. [542] Edwin L. Carty?

A. When I returned home on the night of January 2nd, my wife advised me Mr. Carty had called and wanted to talk to me. I was more anxious to get a report off to my chief about the circumstances on this club, so I came to the office and did not answer the phone call or did not return the call then, but the next morning, in the forenoon sometime, I received a call from Mr. Carty.

Q. What was said during that conversation?

A. Well, Mr Carty told me that he had been president of the Santa Clara Game Preserve and Gun Club, but he had resigned that upon being appointed to the Fish and Game Commission, and he said that—rather, he said Mr. McCormick had been told by someone that they could feed to within 72 hours. I asked him where he got that information.

He stated that Mr. Jack White had told Jim McCormick that such would be the case.

I thoroughly explained the regulations to Mr. Carty. I did not overlook one little thing, because

(Testimony of A. W. Elder.)

I wanted to point out the facts of the violation as it existed, then in the middle of the season.

Mr. Carty said, well, he says, "The members of this club look to me to straighten this matter out on account of my position."

I then asked if he would put that in a letter or give me [543] a letter stating the fact as to how they obtained the information that they could feed to within 72 hours.

He said, "Well, I can't do that in my position." He said, "I will have Mr. McCormick do it, as, after all, Mr. McCormick is the man he talked to." At the same time he gave me Mr. McCormick's name and address.

Mr. Carty stated that he had some important guests that had missed the shooting on the day before when the club was closed, that is the Sunday of January 2nd, no one shot that day, one of their regular scheduled shooting days, and he would like very much if he could take these guests up once more before the season closed, which would close on the 8th of January, and that he himself, owing to pressure of business, would not be able to shoot except on Thursday, January 6th.

He stated that the lima beans and barley had been cleaned up to the best of his knowledge and wanted to know if it would be okay if he shot.

I told him, under the circumstances, that I thought it would be okay, but that I wanted this letter, because if someone who purported to be a deputy federal warden had given the information that they



(Testimony of A. W. Elder.)

could feed to within 72 hours, I wanted to make a complete investigation.

Q. Who was that someone?

A. Jack White. [544]

Q. Did you subsequently receive the letter which you requested?

A. No. I waited nearly two weeks and the letter I had requested had not been received, so I accordingly wrote to Mr. McCormick, asking him for the information.

Q. I show you Government's Exhibit 15 in evidence, and ask you if that is the letter which you wrote to Mr. McCormick.

A. That is the letter.

Q. Did you receive a reply from him?

A. I received a reply a few days later. [545]

\* \* \*

Q. Referring to defense Exhibit B, that is a letter which you received from Mr. McCormick?

A. That is correct.

Q. Why didn't you answer it right away?

A. Why didn't I answer that right away? I received the letter and it was definitely not an answer to my letter and had no bearing on the information I was seeking, nor Mr. Carty, to take care of the situation.

\* \* \*

### Cross-Examination

By Mr. Irwin:

Q. I think you stated before, and I won't go

(Testimony of A. W. Elder.)

into it in great detail, you never did answer that?

A. That is correct.

Q. I think you also said on direct here a moment or two ago, in the conversation with Mr. Carty, that a discussion was had on how the club had missed the shooting day on January 2nd?

A. That is correct. [546]

Q. This was, of course, pursuant to the statement that you had advised the Mexican game keeper, or whoever it was, that they shouldn't shoot because of the condition?

A. That is not right. I did not say that.

Q. I know you didn't say it, but I suppose you advised him on January 1st not to shoot?

A. I didn't advise anyone not to shoot.

Q. I thought you told that to the game keeper.

A. I did not say that.

Mr. Johnson: That was Mr. Spicer.

\* \* \*

### JOHN SPICER

recalled as a witness on behalf of the government in rebuttal, was examined and testified further as follows:

#### Direct Examination

By Mr. Johnson:

Q. Mr. Spicer, showing you Defendants' Exhibit H and referring to the dates of October 16th and 21st, in each of which entries therein it states, "With Palmer, U.S.F.S. to [547] Santa Clara river-

(Testimony of John Spicer.)

bottom gun clubs and Hueneme, Point Magu," and on the 21st it says, "To Santa Clara riverbottom and gun clubs checking hunters," could you explain those entries made by you on the 16th and on the 21st?

A. Well, in the first place, actually there isn't enough room on these reports to cover our daily activities in detail, so most of our superiors, being men of the field, especially Inspector Macklin, who worked that area before he came to Los Angeles, knows the area as well as we do, if not better, so he has never requested us to go into detail on our daily patrol report, except to show certain areas that we work.

Now, when I say "Santa Clara riverbottom," I don't necessarily mean the area adjacent to the Santa Clara Game Preserve. I mean the whole Santa Clara riverbottom where hunting takes place over and down as far as the mouth. The mouth is open to public hunting, and there is a great deal of activity there.

Then we traveled out of the Santa Clara riverbottom on this particular day to the McGrath Lake area and down through Hueneme and the Point Magu area and went where the other clubs are situated. So that is my explanation in two lines of why I said what I did.

Q. Does that mean, referring to the date of the 16th, that you visited the premises of the Santa Clara River Game [548] Preserve?

A. No, it doesn't necessarily mean that.



(Testimony of John Spicer.)

Q. Did you visit there that day? A. No.

Q. Referring to the 21st of October, Friday, October 21, would you explain that?

A. Well, that is about the same, the Ventura and Santa Clara riverbottom and gun clubs, checking hunters, with Warden Edgerton checking ditches and riverbottoms. That practically covers the same area. As I said, our inspector is familiar with the area and he knows just about where we are. I took just about all the space there was for that day just to say that.

Q. You testified on direct in behalf of the government that you did visit the premises of the Santa Clara River Game Preserve on the evening of the 21st of October. Does this "and gun clubs checking hunters," refer to that visit?

A. No, I don't believe so.

Q. What does that mean?

A. This pertains to the Point Magu Game Preserve and Ventura County Gun Club.

Q. In other words, you did not visit the Santa Clara Game Preserve before 6:00 p.m. on the 21st, as you previously testified? A. No, I did not.

#### Cross-Examination

By Mr. Irwin:

Q. Forgive me, Mr. Spicer, if I seem to have a little difficulty understanding you. I understand these weekly reports are taken from your diary, is that correct? A. Yes, they are.

(Testimony of John Spicer.)

Q. The first line of your report to the office of October 16th, 1949, says, "With Palmer U.S.F.S. to Santa Clara riverbottom, gun clubs." The Santa Clara Game Preserve is in the Santa Clara riverbottom, isn't it?

A. It is. There is a comma after Santa Clara riverbottom, gun clubs, and Hueneme-Point Magu.

Q. All right. Well, comma, semicolon, or what have you, what gun club did you visit at the Santa Clara riverbottom?

A. I didn't visit any at the Santa Clara riverbottom. I went with Palmer to the Santa Clara riverbottom, checking the riverbottom and mouth of the river. I then went to the gun club at the Hueneme gun clubs at the Hueneme-Point Magu area.

Q. Just a moment. That comes later. You say "Santa Clara riverbottom, gun clubs," and then Hueneme-Point Magu.

A. The gun clubs on that particular day refer to the Ventura County and the Point Magu Game Preserve. [550]

Q. By the way, you had heard from Mr. Getman the day previous, on the 15th, of his conversation with Mr. McCormick about Mr. McCormick being disturbed about conditions at the club, hadn't you?

A. I don't remember. I was in court at Carpinteria at the time. I don't remember.

Q. You heard Mr. Getman so testify?

A. Yes..

L. F. EDGERTON

called as a witness on behalf of the government in rebuttal, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

Q. You have already testified you observed conditions of the premises of the Santa Clara River Game Preserve on the evening of the 21st and on the morning of the 22nd of October, 1949?

A. Yes, I did.

Q. I show you Defendants' Exhibit L which, according to the testimony, represents cross dike No. 4 on the premises [551] of that club. I ask you if you observed the condition of that particular dike No. 4 on the 22nd of October?

A. Yes. I walked down that dike myself on the morning of the 22nd.

Q. Did you observe this particular duck blind portrayed in the foreground of that picture?

A. I couldn't personally say that is on the No. 4 dike. I observed a duck blind on No. 4 dike.

Q. You observed the duck blind?

A. I observed the duck blind. [552]

\* \* \*

Q. (By Mr. Johnson): Go ahead and tell what you observed.

A. On this particular dike, there was barley strewn down the dike.

Q. Could you describe it more fully?



(Testimony of L. F. Edgerton.)

A. Well, I won't say exactly, but I went over two or three dikes right in that area, and the barley was on the dikes in one of two manners, either in a long line or in piles, one of the two.

Q. Showing you Defendants' Exhibits J and K, which likewise are purported to be pictures of dike No. 4, cross dike No. 4, letter J purports to be looking north from the south road along that dike. Did you observe conditions in that area on the 22nd of October?

A. Well, if that is dike 4 looking north from the south road, that would be the same picture, except the opposite [553] direction.

Q. I guess it would.

A. It would be the same condition.

Q. And Exhibit K purports to be looking from the middle dike toward the south road. That would be the same then, wouldn't it?

A. That would be the same picture with the length of the whole dike in there.

Q. You traversed the length of that dike, did you?

A. I walked the length of the dike.

Q. And you made your observation, as you testified?

A. There was barley on the dike. [554]

\* \* \*

ED WHITE

called as a witness on behalf of the government in rebuttal, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Johnson:

Q. Mr. White, did you on or about the day before the opening of the hunting season of last year, which would be about the 20th of October, have a conversation with County Game Warden Jack White? A. Yes.

Q. Where did this conversation take place?

A. At my place, in the yard.

Q. Who else was present, if anybody?

A. Nobody else.

Q. Was the subject of the Santa Clara River Game Preserve discussed at that time? [559]

A. Yes.

Q. What was said by you and by Mr. White in that connection?

A. Well, Mr. White told me that they had some feed out over at the other duck club?

Q. What did you say?

A. I asked him which one, and he said the Santa Clara.

Q. What else was said?

A. Well, there wasn't much else said, only that I asked him what he was going to do about it.

Q. What did he say? A. He didn't know.

Q. Anything else you can recall?

A. No, I can't recall anything else, just the run of conversation. [560]

## INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen of the jury, it is my duty now to instruct you as to the law of this case.

You have heard the evidence and the argument. Now it is the duty of the court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the information and the denial made by the plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the court and reach a just verdict, regardless of the consequences. [561]

An information is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create



any presumption or permit any inference of guilt.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused, and inconsistent with every reasonable supposition of innocence.

If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury should acquit the accused.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the [562] existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated, and all applicable presumptions

stated in these instructions. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such inferences as seem justified in the light of your experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption is an inference which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury are bound to find in accordance with the presumption.

Relative to the testimony pertaining to the character of [563] the defendants in respect to those traits of character which ordinarily would be involved in the commission of a crime like that charged in this case, I instruct you as follows:

Such evidence is regarded by the law as relevant to the question whether defendant is innocent or guilty of the crime charged, because the jury may, if its judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged.



Character evidence of itself may be sufficient to raise a reasonable doubt whether or not defendant is guilty, which doubt otherwise would not exist. Hence you must consider such evidence in connection with all other evidence in the case.

But if, after weighing all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged against him in the information, your duty will be to find him guilty of that offense, notwithstanding the testimony that he was or is a person of good character.

The defendants, and each of them, have introduced evidence of their good character. This evidence stands uncontradicted.

The purpose and function of character evidence is to generate in your minds a reasonable doubt, and it is to be considered by you regardless of whether the other evidence [564] in the case is clear or doubtful. Therefore, when you consider, as you must, the character evidence introduced along with all the other evidence in the case, if a reasonable doubt exists as to a defendant's guilt, then, as to such defendant, he, and each of them, is entitled to an acquittal.

Of course, mere proof of good character does not entitle a defendant to an acquittal, but it is equally true that evidence of good character, when considered along with all the other evidence in the case, may be the factor which creates the reasonable doubt which entitles the defendant to an acquittal.

A defendant who wishes to testify is a competent witness; and the defendant's testimony is to be



judged in the same way as that of any other witness.

The rules of evidence ordinarily do not permit a witness to testify as to his opinions or conclusions. An exception to this rule exists in the case of an expert witness. A witness who by education and experience has become expert in any art, science or profession, may state his opinion as to a matter in which he is versed and which is material to the case, and may also state the reasons for such opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves; and you may reject it entirely if you conclude the reasons given in support of the opinion are unsound. [565]

During the course of the trial, I occasionally ask questions of a witness, in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court in arriving at your own finding as to the facts.

It is the duty of the court to admonish an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure.

You are to draw no inference against the side to whom an admonition of the court may have been addressed during the trial of this case.

It is charged in the information that on or about October 22, 1949, in Ventura County, California, within the jurisdiction of this court, the defendants

Edwin L. Carty, H. W. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt, and Edward C. Maxwell, without being permitted so to do by any regulation, made, adopted, and approved under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, did take, hunt, and kill migratory waterfowl and migratory game birds over ponds and areas which had been baited by the means, air, and use of shelled grain, namely, barley and cracked lima beans which had been deposited, distributed, [566] and scattered over the ponds and areas so as to constitute a lure, attraction and enticement to said migratory game birds; contrary to the provisions of the Migratory Bird Treaty Act and the regulations relating thereto as duly proclaimed pursuant to law.

You are instructed that the Rules of Criminal Procedure permit the trial of several defendants under one information as in the instant case. However, each defendant is entitled to your separate and considered verdict, with the law as I have given it to you to be applied to each separate defendant in your deliberations concerning him. It is, therefore, possible that you may agree as to your separate verdicts on each and every defendant. It is also possible that you may agree as to a defendant, or defendants, and disagree as to other defendants in this case.

Section 703 of Title 16, United States Code, provides in part that:

“Unless and except as permitted by regulations



made as hereinafter provided in Sections 703-710 of this title, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess," \* \* \* (or) \* \* \* "any migratory bird \* \* \* included in the terms of the conventions between the United States and Great Britain for the [567] protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), and the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936. \* \* \*"

On July 29, 1948, the President of the United States approved and proclaimed a regulation propounded by the Fish and Wildlife Service of the United States, Department of the Interior, under the authority of the Migratory Bird Treaty Act which I have just read to you. That regulation provides in Section 6.3, in part, as follows:

"Waterfowl (except for propagating, scientific, or other purposes under permit issued pursuant to Section 6.8), and mourning doves and white-winged doves are not permitted to be taken, directly or indirectly, by means, aid, or use of shelled, shucked corn, or of wheat or other grain, salt, or other feed that has been so deposited, distributed, or scattered as to constitute for such birds a lure, attraction, or enticement to, on, or over the area where hunters are attempting to take them: Provided, however, such birds may be taken over properly shocked corn and standing crops of corn, wheat, or other grain



or feed, and grains found scattered solely as a result of agricultural harvesting.” [568]

Thus, this regulation which I have just read to you has the effect of law, since it was propounded under the authority of the Migratory Bird Act of 1918, as amended.

Section 707 of Title 16, United States Code, provides in part that:

“Any person, association, partnership, or corporation who shall violate any of the provisions of said conventions or sections 703-711 of this title, or who shall violate or fail to comply with any regulation made pursuant to said sections, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be \* \* \* (punished as the law provides). Thus, there are two essential elements of the offense charged in the information:

First: The taking, hunting, or killing of migratory game birds;

Second: Over ponds or other hunting areas by means, aid, and use of shelled grain or other feed distributed thereover so as to constitute a lure, attraction and enticement to such birds.

There has been testimony that barley and lima beans were found on the premises. It is admitted that barley is grain. The testimony is conflicting as to the amount of barley found on the Santa Clara Game Preserve. It is for your determination [569] as to whether it was present in such quantities as to constitute a lure or enticement for the ducks present, which have been estimated variously between 4000 and 12,000 in number.

As to the lima beans, you must first determine whether, under the terms of the regulations, lima bears are in the category of "other feed," which will lure, entice or attract migratory birds.

You are further instructed that in a case of this sort, it is not necessary for the government to allege or to prove at trial that a defendant or defendants had knowledge of unlawful baiting over hunting grounds to find him guilty of the offense charged. In such case, guilty knowledge or intent is no part of the issue of the case. In this regard it is required that hunters shall investigate at their peril the conditions surrounding the fields and areas in which they are doing their hunting. Thus, the fact that a particular defendant may claim he did not know the area in which he was hunting was baited as charged in the information may not be considered by you in determining his guilt or innocence of the crime charged. He was under a positive duty to investigate for such conditions before hunting in the area. You are instructed that hunters have no property right in migratory birds, but only such permissive privileges as governmental authorities decree. [570]

Nor is the government's power to protect or regulate the hunting of migratory waterfowl confined to those lands to which it has title.

You are instructed that you need not be concerned whether the particular birds in this case are in fact migratory, that is, whether they have actually ever been anywhere other than California in their native haunts; for once the evidence establishes that the particular birds taken are of the species or type



included in the Migratory Bird Treaty and the Congressional Act and Regulations in connection therewith, the question of whether those particular birds actually went out of this state or were raised in this state, or whether they came from Canada, or elsewhere, is not in issue. The only issue, then, is whether the defendants hunted or killed the migratory birds as charged in the information.

In this connection testimony has been produced to the effect that the birds taken from defendants by the enforcement officers, involved in this case, were of the following types: Sprigs, also known as Pintails, Spoonbill, Greenneck Teals, Redheads, Widgeons, and Cackling Geese.

You are therefore further instructed that as a matter of law all birds of these types are migratory birds within the meaning of the Treaty and the statute and regulations concerned in this case.

You are instructed that the regulations concerning the [571] baiting of migratory birds is violated whether the hunters had pursued the indirect method of baiting before the season opened so as to keep the birds in the hunting area to be shot after the season opens, whereupon the hunters may flush them as they walk or punt over the preserves, or by directly placing the grain or other feeds in front of the blinds or stands during the season.

Furthermore, concerning the provisions in the regulation that migratory birds are not permitted to be taken "directly or indirectly" by means of bait, you are instructed that the word "indirectly" equally applies to any luring of the birds by grain



or other feed to the hunting area, regardless of whether the grain or other feeds is spread before the bird blinds themselves or is more widely scattered.

The law presumes a defendant to be innocent of any crime. This presumption of innocence continues throughout the trial, and has the weight and effect of evidence in favor of the accused. You must consider the evidence in the light of this presumption. The presumption of innocence is sufficient to acquit a defendant, unless the presumption is outweighed by evidence satisfying the jury beyond a reasonable doubt of the defendant's guilt.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. [572] Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The

law does not impose upon a defendant the duty of producing any evidence.

A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel satisfied to a moral certainty that a defendant is guilty of the charge.

You are instructed that the presumption of innocence with which the defendants are at all times clothed is not a mere form to be disregarded by you at pleasure, but that it is an essential substantial part of the law of the land, and binding on you in this case, and it is your duty in this case to give the defendants the full benefit of this presumption and to acquit the defendants unless the evidence in this case convinces you of their guilt as charged beyond a reasonable [573] doubt.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which,



if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or [574] willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves. And if you find that a witness has testified falsely in regard to any part of his testimony, you can, if you choose, disregard the whole of such witness' testimony.

You are here to determine the guilt or innocence of the accused from the evidence before you. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So if the evidence convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are also guilty.

On the other hand, if any reasonable doubt remains in your minds after impartial consideration of all the evidence, you should acquit the accused.

It is proper to add the caution that nothing said



in these instructions—nothing in any form of verdict prepared for your convenience—is to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

The punishment provided by law for the offense charged in the information is a matter exclusively within the province [575] of the court, and is not to be considered by the jury in arriving at an impartial verdict as to the guilt or innocence of the accused.

(Whereupon, at 2:35 o'clock p.m., Wednesday, March 8, 1950, the jury retired to deliberate.)

(At 3:40 o'clock p.m., Thursday, March 9, 1950, the jury returned to the box, at which time the following proceedings were had:)

The Court: Ladies and gentlemen of the jury, have you reached a verdict?

The Foreman: Yes, your Honor, we have.

The Court: Will you give it to the bailiff, please, and Mr. Clerk, you may read the verdict for each of the defendants. [576]

\* \* \*

## CONFERENCE ON INSTRUCTIONS

MARCH 3, 1950

Mr. Johnson: My point is that the word "take" is defined as meaning also "attempting." So it is if you attempt to hunt, kill or capture.

The Court: If the defendants came in and said they didn't shoot them, somebody else did, and then you could show they were out there with guns, and even though they didn't shoot, they attempted to shoot——

Mr. Johnson: I am not concerned with that. I am concerned with attempting to bait.

The Court: It doesn't say that.

Mr. Johnson: It defines that, and the regulation uses that, attempts to take birds by means of [19] grain.

\* \* \*

The Court: Isn't one of the questions in this case whether or not ducks will eat lima beans?

Mr. Johnson: No, sir, I don't think it is. And I intend to argue that to the jury. I think the mere fact they don't eat the lima beans doesn't have anything to do with it.

The Court: You mean they can be lured by something they wouldn't eat?

Mr. Johnson: A duck does not know he is going to get a lima bean until he gets down and picks it up. How can a duck tell whether it is a lima bean? He has got to go down there. It lures him down there. The regulation does not require that the duck actually eat the material that is put out. It says

if it lures, attracts or entices them. If all of the ducks are lured down there and there is only enough feed for 10 out of a hundred, obviously all of them were lured, even though only 10 of them eat.

Mr. Irwin: No, you are confused. That statute is "lures by means of grain, wheat, or other feed." Now, if the jury chooses to take one line of testimony, that lima beans are not feed, then it can't be a lure. Let's go right back to the statute here.

Mr. Johnson: I certainly don't agree to that. If I see something that looks like a piece of cake and I go down to eat [22] it and find it is cardboard, I won't eat it.

The Court: But don't you think that under the statute they could make synthetic material that looks like corn or oats or barley and put them out, and it wouldn't be a lure?

Mr. Johnson: No, sir. It would be a lure. I am positive of that.

The Court: It says "feed," doesn't it?

Mr. Johnson: Anything that will tend to lure, entice, or attract, anything that will lure, entice, or attract.

The Court: Let's get back to your law and what it says.

Mr. Johnson: I think I get your point, and I think it is probably true that if it is plastic, it wouldn't hold, but suppose you put out garbage, as was suggested. That is a feed, because it would tend to lure. [23]

\* \* \*

The Court: I don't see any attacks. I don't think I will give 15-A. How about 19-A? I don't



think there is any question about 19-A being the law.

Mr. Johnson: On line 8, again I neglected to put "grain or other feed." The same would go as to line 15, after the word "grain" put in "or other feed."

Mr. Irwin: Just a second, before we pass that by. As your Honor pointed out, you remember that Elder himself, Judge, on cross-examination, said it was not unlawful to feed.

The Court: But Elder doesn't make the law. This is a Ninth Circuit case.

Mr. Irwin: May I look at it again?

The Court: The case?

Mr. Irwin: Yes.

The Court: Here it is right here. There is no argument that 19-A is the law in this District.

Mr. Johnson: Yes. In another District, there is some doubt whether the first paragraph is the law. The second paragraph hasn't been passed on. [29]

Mr. Irwin: I see one distinction, Judge, in this case, and I think it is an important one in giving that. This situation is on a river bottom and we have testimony in here that the congregation of ducks was greatest away from these beans, and so on, and it was the fresh water that attracted the ducks, so there is——

The Court: You can argue that to the jury. I am going to give 19-A, because I think 19-A is the law.

Mr. Irwin: May I respectfully be understood to still object?

The Court: Yes, you can object. [30]

\* \* \*

The Court: I see nothing wrong with No. 23. Now, on this question of entrapment, I don't think there is any evidence on entrapment.

Mr. Irwin: I have already done a lot of work on that question. I have considered it very carefully. I haven't cited all my law in this instruction, necessarily, but I have [33] got it here with me. Let's look at it this way, and then I will give you some of the other definitions which appear in the cases. We start out this way: As you Honor has pointed out, Elder was giving off with opinions, Macklin has given some opinions, Edgerton, and so on. Now, this case here is about a statute where the defendant personally was in a position to know what is meant. But here you have got a statute that doesn't say what is luring. It doesn't say what is baiting. So they write to Elder, "Can we please get together with you so we can find out what the score is?"

The Court: Supposing he says "No"? What is the entrapment?

Mr. Irwin: I am speaking of just the start, Judge. Then they call Maxwell. He calls Edgerton, and he says, "Edgerton, is there any change in the situation? What is the situation?" Edgerton says, "I know of no change." They discuss the 10 days' business.

Carty, at the Fish and Game Commission, asks the Attorney-General. Then they call Macklin and go down to see Macklin, to ask him what the situation is.

The evidence isn't quite finished, but we have

White coming up on Tuesday, Deputy Federal Game Warden, who went out there and talked with McCormick and told him it was all right. If you take all those things, and then read that Sorrell's case, which is the leading case on it, and then these [34] definitions, additional definitions of what constitutes entrapment, you will see what I am getting at.

The Court: I don't think, Mr. Irwin, that you can prove an entrapment unless you can prove someone has done something else. I don't think you can entrap by sitting still and doing nothing.

Mr. Irwin: How about this? Remember, we haven't heard White yet, and we have had Macklin. He has done something positive.

The Court: What did he do?

Mr. Irwin: He told Maxwell if it was substantially cleaned up, "It was all right." He is a Deputy Federal Game Warden.

The Court: Then the question is, was it substantially cleaned up? You can argue that to the jury. You can argue it was substantially cleaned up. He is relying upon the information given. Now, if they had gone out there and scattered some grain around themselves and then stood around and caught them, I would go along with you.

Mr. Irwin: You know, I think that is what happened. This is with due respect to you, but there was testimony of Elder about the fact that it looked like a man walked along with a bag with a hole in it, and when they distributed the grain 10 days previous, it was done with a spreader. Nobody walked along with any bag. But we can't prove that. [35]



Mr. Johnson: I entirely disagree with what you say, and I am not sure I would fight for your right to say it.

Mr. Irwin: Here is another thing, Judge. I think it goes along the line of these cases of speed traps. There is a line of decisions where you have a speed trap or entrapment.

The Court: You had something positive there. The officers went out and laid the trap.

Mr. Irwin: I am sorry to argue this so long.

The Court: You can argue to your heart's content.

Mr. Irwin: They asked an officer, "Say, will you please come out and look my place over and tell me are we all right, within the regulations?" That is the guy's job, to try and prevent crime, and he says, "I will let you know if it is not all right." Then they don't hear from him. The guys were down there and they don't tell him anything.

Mr. Johnson: May I say something there? Every one of the defendants so far has admitted he knew he could not shoot over baited territory, and even assuming you were correct, the question is whether on the day they were shooting, the 22nd of October, they were shooting over baited territory. Just because someone fails to come down and stop them from shooting doesn't save them. He knew he couldn't shoot and if he felt so strongly about it and was so concerned about it, he shouldn't have shot. He should have said, "Come down and tell me if I have got it cleaned up." [36]

Mr. Irwin: Before you rule, I would like to have you listen to White's testimony.

The Court: I am not going to agree to give or not to give these instructions. I am going to hold them in abeyance and wait until I hear all the rest of the evidence, but if the evidence does not go a whole lot further than it has gone, I won't give them. [37]

\* \* \*

Mr. Irwin: I don't like to labor the question, but I feel very deeply on the situation. You come into a situation here where you go to an officer on a thing that is not clear and have him tell you a certain thing is all right, and he says, "Now, listen, I have told my boys to let me know on this thing if there is anything that isn't what it should be, and I have instructed them to get in touch with me." Can't you walk out of there——

The Court: That is not entrapment. I think they have [38] got to lay a trap. I am not going to refuse to give these instructions, but I am going to wait until the end of the case, and I am going to read these cases you cite. I may be able to convince myself they are good, but at the present time I don't just see them.

\* \* \*

The Court: I don't think this case is going to the jury before Wednesday, anyway. You take these and read them and then give them to me, Mr. Johnson. I don't know everything about the law of entrapment, but before you can have an entrapment, you have got to show that somebody set a

trap. I don't think you can prove an entrapment by saying that somebody failed to do something, even though it is his duty.

Mr. Irwin: I think you will find, Judge, it doesn't have to be that strong. A representation or a subterfuge is sufficient. They don't have to go out and just absolutely lay a trap.

The Court: I think these officials are really going a [39] little bit further than the law says by saying if the grain was substantially cleaned up, because I think the cases definitely say if there is any grain there at all. [40]

\* \* \*

March 8, 1950

Mr. Irwin: You have been very patient on this entrapment. In addition to Jack White's testimony, I notice this, which I think is very persuasive. In Government's Exhibit M, it was stipulated that these are the government regulations that were handed out. Will you look at this note here?

The Court: That's all right.

Mr. Irwin: The government tells them to go and see the State Board.

The Court: If the government told you to go ahead and told you to shoot and stood there and watched you shoot, knowing grain was there, maybe you would have something.

Mr. Irwin: But Jack White was a Deputy Federal Warden.

Mr. Johnson: You have got to have something more than a neglect of duty.

Mr. Irwin: That is a positive statement. The



man was acting as a Deputy Federal Game Warden on that date.

The Court: I don't know whether he was acting as a Federal Game Warden or County Game Warden.

Mr. Irwin: I may be in error on that, but on that date he was a County and State and Deputy Federal Game Warden. [43]

\* \* \*

Mr. Irwin: On the formality that has been practiced when submitting proposed instructions, not to number them, I numbered none of them, but I think, also, from the standpoint of the record, I am required at the conclusion of your Honor's instructions, to object. Will you give the entrapment instruction a number now that there has been a ruling.

Mr. Johnson: You can object to all the instructions given.

Mr. Irwin: I don't do that. The only exception I have is on the entrapment. We have settled all the others.

The Court: Supposing you number that A then, Defendants' A, and you can object.

Mr. Irwin: I will just do that. [45]

Los Angeles, California, March 9, 1950,  
2:35 o'Clock, p.m.

(The following portion of the transcript was omitted at page 576, line 4, of volume 3:)

Mr. Irwin: May it please your Honor, I wish again to object to your failure to give defendants' suggested instruction number A.

(Whereupon, at 2:35 o'clock, p.m., Wednesday, March 8, 1950, the jury retired to deliberate, and returned to the court room at 9:10 o'clock, p.m., when the following proceedings were had:)

The Court: Is it stipulated the jury is present and in the box?

Mr. Irwin: Yes.

Mr. Johnson: Yes, your Honor.

The Court: Ladies and gentlemen, have you selected a foreman?

The Foreman: Yes.

The Court: Have you been able to reach a verdict?

The Foreman: No, sir.

The Court: Do you feel there is any possibility of reaching a verdict?

The Foreman: It doesn't seem that way. Not tonight, anyway.

The Court: I would like to call your attention to the [46] fact that we have spent six days on the trial of this case. It has cost the government a large sum of money to try the case. It is very desirable, if you can do so, to reach a verdict. However, I do not wish any of you in any way to give up your honest convictions. Whether you feel that the defendants are guilty or innocent, you should hold to those convictions unless in further deliberations you can reach a verdict. I wish you would return to the jury room and continue your deliberations in the hope that you can come to some conclusion in this case. If you are not able to reach

a verdict by 10:30, why, then, we will consider what disposition we will make of you in regard to the case.

Will you continue your deliberations, consulting with each other, without giving up any of your honest opinions, and see whether or not it is possible for you to reach a verdict in this case. You may retire to the jury room.

(Whereupon, at 9:15 o'clock p.m., Wednesday, March 8, 1950, the jury retired to deliberate, and returned to the court room at 10:40 o'clock p.m., when the following proceedings were had:)

The Court: Is it stipulated the jury is present and in the box?

Mr. Irwin: So stipulated, your Honor.

Mr. Johnson: So stipulated.

The Court: Ladies and gentlemen, I assume you have not [47] been able to reach a verdict.

The Foreman: We have not.

The Court: Do you feel if I would allow you to go back into the jury room and deliberate, you could reach a verdict within the next 25 or 30 minutes?

The Foreman: I don't think so.

The Court: As I said to you before, and I will say again now, this is a rather important case. We have spent six days in its trial. We have had a number of witnesses here. There is considerable interest in the outcome of the case. I don't think the court is justified at this time in discharging you, so I have made arrangements for you to spend the



night at a hotel, and tomorrow morning you can come back here after you have had your breakfast and deliberate some more, and ascertain whether or not you can determine whether the defendants are innocent or guilty. If any of you wish to notify any of your families, if you will give the telephone numbers to the bailiff, why, he will call your families and tell them that you are unavoidably detained for the night.

Mr. Irwin: May we approach the bench?

The Court: Yes.

(The following proceedings were had at the bench, outside the hearing of the jury:)

Mr. Irwin: Just for the record, as we said in chambers, I feel in the light of the last statement of the Foreman, I [48] should move for a mistrial and that the jury be discharged.

The Court: If you make the motion, the motion is denied.

Mr. Irwin: That is what I understand.

(The following proceedings were had in open court in the hearing and presence of the jury:)

The Court: You may now retire and we will stand in recess until 10:00 o'clock tomorrow morning.

(At 3:00 o'clock p.m., Thursday, March 9, 1950, the jury returned to the box, at which time the following proceedings were had:)

The Court: Is it stipulated the jury is present and in the box?

Mr. Irwin: So stipulated, your Honor.

Mr. Johnson: So stipulated.

The Court: Ladies and gentlemen of the jury, have you arrived at a verdict?

The Foreman: Your Honor, we have not.

The Court: Do you feel that there is any use of further deliberations?

The Foreman: I don't know what to say, your Honor.

The Court: Well, if you could arrive at a verdict, it is important that you do so. However, I don't want any one member of the jury panel to give up his or her own honest [49] convictions. You have been in session now for approximately 24 hours. It would seem to me if you are able to arrive at a verdict, you would have done so. You are the foreman of the jury. You are the spokesman of the jury. Would you request that you have further opportunity to deliberate on this case?

The Foreman: I would, your Honor, ask another hour?

The Court: Another hour?

The Foreman: Yes.

The Court: You may retire to the jury room and continue your deliberations. At the end of an hour, we will call you back down to court and determine as to what the situation is.

(Whereupon, at 3:05 o'clock p.m., Thursday, March 9, 1950, the jury retired to deliberate further, and at 3:40 o'clock p.m., returned to the box, at which time the proceedings were

had as indicated on page 576 of the transcript, line 9.) [50]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 29th day of May, A.D. 1950.

/s/ S. J. TRAINOR,  
Official Reporter.

[Endorsed]: Filed June 20, 1950. [51]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 96, inclusive, contain the original Information; Verdicts; Instructions Given; Instructions Refused; Notice of Motion and Motion for New Trial; Stipulation and Order re Motion



for New Trial; Judgments; Notice of Appeal; Stay of Execution; Stipulation and Order Extending Time to Docket Appeal and Designation of Record on Appeal and full, true and correct copies of Minute Orders Entered February 28, 1950, March 2, 1950, March 9, 1950, and March 20, 1950, which, together with copy of reporter's transcript of Proceedings on February 28, 1950, March 1, 1950, March 2, 1950, March 3, 1950, March 7, 8 and 9, 1950, in four volumes and original plaintiff's exhibits Nos. 1 to 15, inclusive, and original Defendants' Exhibits A to N, inclusive, transmitted herewith, constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$4.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 23rd day of June, A.D. 1950.

EDMUND L. SMITH,  
Clerk.

[Seal]:       /s/ THEODORE HOCKE,  
Chief Deputy. [52]

In the United States Court of Appeals  
for the Ninth Circuit

No. 12590

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN L. CARTY, et al.,

Defendants.

STATEMENT OF POINTS ON WHICH AP-  
PELLANTS INTEND TO RELY ON APPEAL

I.

The Court erred in its rulings on the admission of testimony and exhibits.

II.

The Court erred in its instructions to the jury.

III.

The Court erred in failing to give instructions to the jury requested by the defendants.

IV.

The Court erred in not granting the motion of the defendants for a mistrial during the course of the deliberations of the jury.

V.

The Court erred in denying defendants' Motion for a New Trial.

## VI.

The Court erred in imposing judgment and sentence.

OTTO CHRISTENSEN and  
JOHN J. IRWIN,

By /s/ OTTO CHRISTENSEN,  
Attorneys for Defendants.

[Endorsed]: Filed July 6, 1950.

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[Endorsed]: No. 12590. United States Court of Appeals for the Ninth Circuit. Edwin L. Carty, H. McCormick, Eugene Doud, James R. Doud, Vincent Doud, Raymond E. Farrell, James D. McCormick, Robert Maulhardt and Edward C. Maxwell, Appellents, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 26, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
The Ninth Circuit.